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The Presidential Executive Order as an Instrument for Policy-Making.

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THE PRESIDENTIAL EXECUTIVE ORDER AS AN
INSTRUMENT FOR POLICY-MAKING.**

**Louisiana State University, Ph.D., 1966
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THE PRESIDENTIAL EXECUTIVE ORDER
AS AN INSTRUMENT FOR POLICY-MAKING

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of Government

by
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A C K N O W L E D G M E N T

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A B S T R A C T

The purpose of this study is to establish that the President uses the formal, legally binding executive order as an instrument for making public policy. The hypothesis was tested by analyzing eight executive orders issued by three Presidents under the prerogative of their office. The evidence, primarily from government documents, demonstrates that the Presidents used executive orders to establish significant domestic policies about civil rights.

In the process of confirming the hypothesis, the author isolates six factors that influence a President's decision to make policy by executive order. These include the identification of a problem that requires national governmental action for its solution, public demand for action, the personal values of the President, political party advantage, the inability or unwillingness of the executive departments to solve a problem, and the failure of Congress to enact legislation.

The President selects the executive order as an instrument for action in three types of situations: first, when he can carry out the policy administratively and wants

to avoid involving it in congressional controversy; second, when a segment of the American public demands legislation, but he considers the risks of defeat or reprisal to be too great for him to recommend congressional action; and third, when he seeks legislation and Congress refuses to respond with a law.

The future of the presidential executive order as an instrument for policy-making lies in its increased use as a tool for solving complex policy problems, as a means for moving in advance of Congress to establish national policies, and as a method for controlling state and local administration of programs benefiting from the economic resources of the national government.

CHAPTER I

INTRODUCTION

Statement of the Problem

One of the critical questions in the study of political life is how a given society determines its authoritative policies and puts them into effect. By the term "policy" is meant the formal, legally binding formulation of public objectives as broad rules applicable to all persons and activities within their compass.¹

In the United States all legal policy must ultimately be based upon authority derived from the Constitution. The first three articles in the Constitution distribute the power:

Article I. Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

¹This definition refers to one type of policy that emerges from the political system. A policy may be "legitimate" insofar as it conforms to the procedural and substantive values of the system, and yet not enjoy a formal, legal status. See Samuel H. Beer and Others, Patterns of Government (2d rev. ed.; New York: Random House, 1962), p. 60.

Article II. Section 1. The executive Power shall be vested in a President of the United States of America.

Article III. Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

In legal theory "legislative power" is the authority to make or repeal the laws, the "executive power" is to administer and enforce, and the "judicial power" is to interpret and apply the laws.

On the basis of explicit delegations of power, as well as implicit constitutional authority,² Congress enacts laws that incorporate policies, and these statutes are in turn the basis for further policy formulated as presidential orders or as administrative rules and regulations. The Supreme Court, recognizing that the three power-distributing clauses do not "divide fields of black and white"³ and that some legislative power must be delegated if government is to function, has upheld congressional delegations of discretionary power to the executive

²McCulloch v. Maryland, 4 Wheat. 316 (1819).

³Justice Holmes, Springer v. Philippine Islands, 277 U.S. 189, 209 (1928).

branch.⁴ Most policy-making authority exercised by Presidents is delegated by Congress.⁵

However, Presidents throughout the history of the country have also exercised power, legislative in nature, on the basis of the independent grants of authority in the Constitution. The courts have interpreted the President's authority to make policy in the realm of foreign relations as being virtually exclusive and without limit.⁶ However, the limits to presidential prerogative in the realm of domestic affairs is less clear. The purpose of this study is to study in a limited way, the presidential practice of making policy in domestic matters under the prerogative of office.

The study is limited in time to the administrations of Presidents Truman, Eisenhower, and Kennedy, because of the greater relevance for anticipating future developments

⁴Field v. Clark, 143 U.S. 649 (1891).

⁵For example, of the more than sixteen hundred executive orders issued between 1945 and 1963, Presidents Truman, Eisenhower, and Kennedy issued 81 percent under statutory authority and the remaining 19 percent under constitutional authority alone.

⁶United States v. Curtiss-Wright Export Corp. 299 U.S. 304 (1936). Consult "The Executive Power Today," The Powers of Congress in U.S. Foreign Relations, Congressional Digest, XXX (February, 1951), 41.

in the exercise of presidential prerogative. More than one administration was selected to make possible a comparison of presidential claims of authority. Civil rights, as the subject of presidential action, was selected because of its importance as a domestic issue in the post-World War II period. The study is further limited to one form of presidential policy, the executive order. This term is used to refer to a formal, legally binding presidential document entitled Executive Order and is not used in a general sense to refer to every presidential order authorizing or directing that an act be performed. Not all executive orders make general public policies. For example, those that pertain to exclusively organizational details, such as the membership of committees, are excluded from consideration.

Eight executive orders meet all of the limiting criteria. These established policies of equality of treatment and opportunity in the armed forces, fair employment practices in government and in private enterprise under government contract, and equal opportunity in housing.

The general nature of executive orders and the President's authority to issue them are next considered, in order to establish the context for analyzing the eight executive orders selected for detailed study.

Nature of the Executive Order

No law, or even executive order, defines the term "executive order." In many instances no material difference in style and form exists between executive orders and certain other presidential documents.⁷ In fact, there is no adjudicated distinction between the two main instruments of the President's formal acts, the executive order and the proclamation:⁸

. . . unless the word "proclamation" . . . has a signification so different from "order" A proclamation by the President, reserving lands from sale, is his official public announcement of an order to that effect. No particular form of such an announcement is necessary. It is sufficient if it has such publicity as accomplishes the end to be attained.

The executive order has not always been a separate classification of presidential documents, and the

⁷Title 3 of the Code of Federal Regulations has included since 1945 under the rubric "Presidential Documents" the following: Executive Orders, Proclamations, Reorganization Plans, Military Orders, Regulations, Designations of Officials (by Letter, Order, Presidential Appointment), Interpretations, Trade Agreement Letters, Reorganization Plans and Transfer Plans, and Administrative Orders (including Directives, Memorandums, Letters, Notices, Designations).

⁸Wolsey v. Chapman, 101 U.S. 755, 770 (1879).

earlier orders lack uniformity in form and style.⁹ The inauguration of a numbering system around 1907 eliminated most of the confusion regarding what may or may not be an executive order.¹⁰ And since 1929 Presidents have made an effort to coordinate executive orders through interagency channels and to standardize their style by prescribing the procedure of preparation, presentation, filing, and publication of executive orders.¹¹

⁹James D. Richardson, authorized by Congress to make a compilation of presidential documents, did not discover "executive orders" until after he had completed volume I in 1895. James D. Richardson, A Compilation of the Messages and Papers of the Presidents, 1789-1902 (Washington, D.C.: Government Printing Office, 1897), II, 3.

¹⁰All executive orders on file at the time in the Department of State were arranged chronologically and given a number. Back orders, as they were added to this file, were assigned intermediate numbers. U.S. House, Committee on Government Operations, Executive Orders and Proclamations: A Study of a Use of Presidential Power (Committee Print), 85th Cong., 1st Sess., 1957, p. 37.

The executive order officially designated "Number 1" was issued by President Lincoln on October 20, 1862, and concerned the establishment of military courts in Louisiana. U.S. Works Projects Administration, Historical Records Survey, Presidential Executive Orders ([New York]: Hastings House, 1944), I, 1. An order dated March 10, 1862, ordering deserters from the armed forces to return to duty appears as "No. 1" in the U.S. Statutes at Large, although it does not appear in the official Numbered Series. 12 Stat. 731 (1863).

¹¹Executive Orders Numbers 5220, November 8, 1929; 5658, June 24, 1931; 6247, April 10, 1933; 7298, February 18, 1936; 10006, October 9, 1948, 13 Fed. Reg. 5927; 11030, June 19, 1962, 27 Fed. Reg. 5847.

Nevertheless, there is no required form. Justice Black in the Court opinion in the Steel Seizure case "discovered" that the form of the executive order in question was like that of a statute:¹²

The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution.

Twenty-nine percent of the executive orders issued by Presidents Truman, Eisenhower, and Kennedy were in this form, that is the typical form of the presidential proclamation. Most executive orders, however, begin: "By virtue of the authority vested in me by . . . , I hereby order . . . ," and the text of the order then follows. In no case, however, has the form of an executive order made it invalid, but the lack of constitutional authority as exercised by the President has.

The only statute governing executive orders is primarily a notice and publication statute. The Federal Register Act of 1935 requires that executive orders be

¹²Youngstown Sheet & Tube Co. v. Sawyer (Steel Seizure case), 343 U.S. 579, 588 (1952).

published in a serial publication, the Federal Register.¹³

In addition, the Act specifies that the contents of the Federal Register be judicially noticed. This reinforced an earlier Supreme Court ruling that executive orders are "public acts of which all courts of the United States are bound to take notice, and to which all courts are bound to give effect."¹⁴ The Supreme Court has also ruled that executive orders have "the force of public law,"¹⁵ and that the violation of provisions of an executive order may be made a crime punishable by sanctions and penalties, if the Congress so provides.¹⁶ Even though the President

¹³49 Stat. 500 (1935). The Federal Register Act requires all executive orders "except such as have no general applicability and legal effect or are effective only against federal agencies or persons in their capacity as officers, agents or employees thereof" to be published in the Federal Register. Executive Order No. 10006, October 9, 1948, 13 Fed. Reg. 5927, requires current publication in the Federal Register of all executive orders.

¹⁴Armstrong v. United States, 13 Wall. 154, 156 (1871).

¹⁵Jenkins v. Collard, 145 U.S. 546, 560-561 (1891). Also consult Glendon A. Schubert, Jr., The Presidency in the Courts (Minneapolis: University of Minnesota Press, 1957), p. 314, n. 38, for a "partial list" of twenty cases that uphold presidential orders as a source of law binding on both citizens and courts.

¹⁶United States v. Eaton, 144 U.S. 677, 688 (1892).

may not define a crime, there are sanctions--such as the refusal of benefits and punitive publicity--that may be imposed without judicial intervention.¹⁷

The constitutionality of particular executive orders poses a more difficult problem than the judicial review of statutes. While a statute may be held unconstitutional only if it contravenes some provision of the Constitution, an executive order is invalidated if it is held to conflict not only with provisions of the Constitution, but also with provisions of a statute,¹⁸ or even the implied intent of Congress.¹⁹ This has been the case even in an area where the President has a special constitutional status, such as Commander in Chief.²⁰

On the other hand, Congress by statute may "ratify" a prior executive order explicitly by direct reference²¹ or even implicitly. For example, the

¹⁷Louis L. Jaffe, Judicial Control of Administrative Action (Boston, Toronto: Little, Brown & Company, 1965), p. 261.

¹⁸Cole v. Young, 351 U.S. 536 (1956).

¹⁹Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 534 (1952).

²⁰Little v. Barreme, 2 Cr. 170 (1804).

²¹Hirabayashi v. United States, 320 U.S. 81, 87-88, 91 (1943).

appropriation of funds to support the activity authorized by the executive order "stands as confirmation and ratification of the action of the Chief Executive."²² Furthermore, the Court accepts as implicit ratification an executive practice that has been pursued for a long period of time, when Congress both knows of it and has not objected.²³

The courts, generally exempting themselves from jurisdiction on the basis that the action in question is a "political question," have exercised restraint in ruling on a constitutional question of presidential action.²⁴ Also, the Supreme Court makes no claim to judicial direction of presidential acts,²⁵ but it will, for example, issue writs of mandamus to lesser executive officers.²⁶ The limitation of judicial review is also apparent in instances in which the enforcement of an executive order

²²Fleming v. Mohawk Wrecking & Co., 331 U.S. 111, 116 (1947).

²³United States v. Midwest Oil Co., 236 U.S. 459 (1915).

²⁴Marbury v. Madison, 1 Cr. 137, 165-166 (1803), established this doctrine.

²⁵Mississippi v. Johnson, 4 Wall. 475 (1867).

²⁶Kendall v. United States ex rel. Stokes, 12 Pet. 524 (1838).

infringes upon private rights and raises clearly justiciable controversies, for it is extremely difficult for injured persons to obtain definitive judicial scrutiny of a controversy in time to do much good.²⁷ Of course, this limitation is not peculiar to instances arising from executive orders.

Constitutional Authority to Issue Executive Orders

Since the issuance of an executive order is an exercise of presidential authority under the Constitution or a statute, the nature and limitations of the executive power under Article II are called into question. Because the powers of the President are barely outlined in Article II, the power vested in the President and exercisable

²⁷Clinton Rossiter, The Supreme Court and the Commander in Chief (Ithaca, N.Y.: Cornell University Press, 1951), p. 126. For elaboration on the scope of judicial review of presidential action consult C. Herman Pritchett, "The President and the Supreme Court," The Presidency in Transition, Journal of Politics, XI (February, 1949), 80-92; Schubert, op. cit., chap. 11; Joseph Tannenhaus, "The Supreme Court and Presidential Power," The Office of the American Presidency, The Annals of the American Academy of Political and Social Science, CCCVII (September, 1956), 106-113; and Arthur T. Vanderbilt, The Doctrine of the Separation of Powers and Its Present-Day Significance ([Lincoln]: The University of Nebraska Press, 1953), pp. 124-144.

by him on his own initiative provides a more difficult problem of interpretation than that dealing with statutory authority. Presidential and judicial interpretations of Article II authority have favored a "broad" construction of the Constitution and have added to the reservoir of constitutional powers exercisable by the President. These are sometimes called "inherent," "implied," "aggregate," "incidental," "war," or "emergency" powers.

The provisions of Article II that have supported broad claims of authority include:

The executive Power shall be vested in a President of the United States of America; . . .

The President shall be Commander in Chief of the Army and Navy of the United States, . . .

. . . he shall take Care that the Laws be faithfully executed, . . .

One view of the "executive power" clause is that it is a grant of general executive power, while the other view is that the clause adds nothing to presidential authority, but rather is a declaratory expression that summarizes the enumerated powers thereafter stated in Article II. Today, in the light of the views and practices of recent Presidents, the "power" theory of the clause is predominant.²⁸

²⁸Edward S. Corwin, The Constitution and What It Means Today (New York: Atheneum, 1963), p. 10.

The President's power as Commander in Chief has been transformed from a simple power of military command²⁹ to a vast reservoir of indeterminate powers in time of emergency.³⁰ The full import of the Commander in Chief clause was not realized until President Lincoln used it and the "take care" clause to derive what he termed the "war power."³¹ On this basis Lincoln justified a series of measures that he took in the interval between the fall of Fort Sumter, April 14, 1861, and the convening of Congress in special session on July 4, 1861,³² and the Supreme Court sustained this interpretation of presidential power.³³ Subsequently, the Court continued to be reluctant in

²⁹Hamilton in Federalist No. 69: "It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the Confederacy."

³⁰Edward S. Corwin, The President: Office and Powers, 1787-1957: History and Analysis of Practice and Opinion (4th rev. ed. New York: New York University Press, 1957), p. 16. Hereinafter cited as The President.

³¹Edward S. Corwin, Total War and the Constitution (New York: Alfred A. Knopf, 1947), p. 16.

³²President Lincoln's message to Congress, July 4, 1861, as quoted in Clarence Arthur Berdahl, War Powers of the Executive of the United States ([Urbana]: The University of Illinois, 1921), pp. 110-111.

³³The Prize Cases, 2 Bl. 635 (1863).

adversely deciding cases involving "war powers," especially while war was still in progress.³⁴

With "total war" came claims of "emergency powers" to justify the use of unusual presidential powers to meet crises. The term "emergency" is not mentioned in the Constitution, but presidential actions based upon a broad interpretation of constitutional provisions and judicial restraint where the presidency is involved³⁵ have permitted a considerable expansion of governmental activity during the past thirty years.³⁶

³⁴Ex parte Milligan, 4 Wall. 2 (1866) condemned the establishment of military commissions in peaceful areas where civil courts were open, but was not decided until after the end of the Civil War; and it was not until after World War II had ended that the Supreme Court decided in the case of Duncan v. Kahanamoku, 327 U.S. 304 (1946), that the declaration of martial law in Hawaii following the attack on Pearl Harbor had exceeded the permissible range of law. Francis H. Heller, The Presidency: A Modern Perspective (New York: Random House, 1960), p. 62.

³⁵Albert L. Sturm, "Emergencies and the Presidency," The Presidency in Transition, Journal of Politics, XI (February, 1949), 123; Carol Thompson, "The Presidency in Crisis," Current History, VIII (January, 1945), 34.

³⁶On this subject generally, consult Rankin M. Gibson, "The President's Inherent Emergency Powers," The Federal Bar Journal, XII (October, 1951), 107-151; John P. Roche, "Executive Power and Domestic Emergency: The Quest for Prerogative," The Western Political Quarterly, V (December, 1952), 592-618; Clinton L. Rossiter, Constitutional Dictatorship: Crisis Government in the Modern Democracies

From the clause that "he shall take Care that the Laws be faithfully executed," The President derives his role as Chief Administrator. This provision has also been subject to two lines of argument through the years. One view is that the clause requires the President to carry out the laws of Congress, and the other, that the clause is an independent grant of authority. Justice Black in the Court opinion in the Steel Seizure case expressed the restrictive view:³⁷

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.

(Princeton: Princeton University Press, 1948), passim; J. Malcolm Smith and Cornelius P. Cotter, Powers of the President During Crisis (Washington, D.C.: Public Affairs Press, 1960), passim; and Lucius Wilmerding, Jr., "The President and the Law," Political Science Quarterly, XLVII (September, 1952), 321-338.

³⁷ 343 U.S. 579, 587 (1952). For this view also see Bernard Schwartz, A Commentary on the Constitution of the United States (New York: The Macmillan Company, 1963), Pt. 1, II, 73, 75.

In a later case, although the constitutionality of the executive order was avoided by deciding the case on procedural grounds, Justice Black noted:³⁸

But I wish it distinctly understood that I have grave doubt as to whether the Presidential Order has been authorized by any Act of Congress.

That order and others associated with it embody a broad, far-reaching espionage program over government employees. These orders look more like legislation to me than properly authorized regulations to carry out a clear and explicit command of Congress . . . And of course the Constitution does not confer lawmaking power on the President.

I have thought it necessary to add these statements to the court's opinion in order that the President's power to issue the order might not be considered as having been decided sub silentio.

On the other hand, the effect of a case decided by the Supreme Court in 1899 was to interpret this clause as a grant of policy-making authority.³⁹ Justice Miller, writing for the Court, said that the President's constitutional duty to "take care that the laws be faithfully executed" is not "limited to the enforcement of acts of Congress or of treaties according to their express terms," but includes "the rights, duties and obligations growing

³⁸Peters v. Hobby, 349 U.S. 331, 350 (1955).

³⁹In re Neagle, 135 U.S. 1 (1899).

out of the Constitution itself . . . and all the protection implied by the nature of the government under the Constitution." That the President is entitled to claim broad powers under this clause "has been demonstrated many times in our history," wrote Professor Edward S. Corwin.⁴⁰

Under the power-granting view of the "take care" clause, Presidents Eisenhower and Kennedy issued executive orders prohibiting discrimination in employment in private enterprise under government contract and in federally-assisted housing. The Commander in Chief clause and the "take care" clause provided the basis for the presidential ban on discrimination in government employment and segregation in the armed forces. Seldom has the President's authority to promulgate rules and regulations for the civil service and the armed forces been questioned.⁴¹

In the context of the foregoing discussion, the executive orders on the subject of civil rights issued by three Presidents under the prerogative of their office, the factors that prompted the issuance of the orders, and the extent to which they were implemented, will be analyzed.

⁴⁰The President, p. 104.

⁴¹See Schubert, op. cit., p. 34.

C H A P T E R I I

EQUALITY OF TREATMENT AND OPPORTUNITY

IN THE ARMED SERVICES

Executive Order No. 9981, issued July 26, 1948,¹ originated in the efforts of Negro and interracial groups during World War II to eliminate racial discrimination in the armed services² and in President Truman's decision to move forcefully ahead at the national level to protect minorities' civil rights. The Order declared "the policy of the President [to be] . . . equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin." The duties of the President's Committee on Equality of Treatment

¹13 Fed. Reg. 4313. See Appendix I for text of Executive Order No. 9981.

²"Equality of treatment and opportunity" and "nondiscrimination" are terms that are used interchangeably in this chapter to mean that no individual is treated differently from another on the basis of race, color, religion or national origin. The discussion focuses on racial discrimination against Negroes. The term "segregation" is used to indicate one manifestation of discrimination. In the context of the military service, the major step in eliminating discrimination was to desegregate the armed forces. Where quoted sources use the terms "segregation" and "discrimination" interchangeably, or use "nondiscrimination" to mean "separate-but-equal," no attempt is made to revise the quotation.

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and Opportunity in the Armed Services, established by the Order, were;

To examine into the rules, procedures and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out the policy of this order.

The first section in this chapter analyzes some political factors that influenced presidential decision. These include the existing policies in the military departments and the pressures for changes. The second part shows the unwillingness of Congress to pass legislation requiring desegregation of the armed services. The next section analyzes the alternatives for presidential action and suggests that political necessity prompted the issuance of Executive Order No. 9981. The remainder of the chapter considers the implementation of the Executive Order, the extent to which the measures taken were effective in changing actual practices, and finally, subsequent congressional action.

Factors Prompting Presidential Decision

Existing Policy

Presidents make decisions in a political environment that not only encompasses present conditions, but also

past experience. A review of personnel policies as they relate to discrimination in the armed services prior to 1948 reveals that President Truman reinforced an emerging trend when he issued an executive order directing equal treatment in the armed forces. Executive Order No. 9981 speeded up a process already under way in the Navy, and beginning in the Air Force and Army.

Congress had indicated intent in one instance. The Selective Service Act of 1940 provided:³

. . . in the selection and training of men under this Act, and in the interpretation and execution of the provisions of this Act, there shall be no discrimination against any person on account of race or color.

Representative Hamilton Fish had introduced the nondiscrimination amendment on behalf of the Committee on Participation of Negroes in the War, a group established by the Pittsburgh Courier, a Negro newspaper. The Committee was reported to be "sure" the amendment would abolish segregation in the armed forces.⁴

³Sec. 4(a), Selective Service Act of 1940, 54 Stat. 887 (1940).

⁴Lee Nichols, Breakthrough on the Color Front (New York: Random House, 1954), p. 39.

The nondiscrimination clause in the Selective Service Act of 1940, though, meant "nothing as far as [the NAACP] was concerned."⁵ However, Truman K. Gibson, Negro Civilian Aide to Secretary of War Stimson, contended that if the amendment had not been inserted in the legislation, the Army might have taken the easy way out of a difficult problem and simply not taken the number of Negroes that it did during World War II.⁶

As a matter of fact, policies with regard to racial segregation in the armed services depended as a practical matter upon the will of the officers administering or supervising particular programs. Men at various echelons prodded the services into allowing greater opportunities for Negroes, while others--tradition-bound--resisted such efforts.

On October 9, 1940, the White House released a War Department statement that Negro personnel would be substantially increased so as to constitute the same proportion in the Army as in the national population,

⁵U.S. House Armed Services Committee, Hearings on Selective Service, 80th Cong., 2nd Sess., 1948, p. 6322.

⁶U.S. Senate Armed Services Committee, Hearings on Universal Military Training, 80th Cong., 2nd Sess., 1948, p. 646.

but that the War Department would maintain segregated regiments.⁷ Furthermore, the 92d and 93d Divisions were reactivated in World War II, contrary to the assurance the Army gave Selective Service that Negro divisions would not be formed.⁸

Despite the Army's segregation policy throughout the war, the need for combat troops in Europe in 1945 caused a dent in Army segregation practices. Negro platoons were assigned among eleven combat divisions of the First and Seventh Armies. At that time Negro soldiers would have been used in completely unsegregated combat units had not the War Department in Washington refused to approve this step.⁹ Most of these platoons, however, were ordered out of the combat divisions and assigned once more to service units after V-E Day.¹⁰

⁷War Department statement reprinted in part in President's Committee on Equality of Treatment and Opportunity in the Armed Services, Freedom to Serve (1950), p. 48. Hereinafter cited as Freedom to Serve.

⁸Ibid., p. 47.

⁹Nichols, op.cit., pp. 65-69; Walter White, A Man Called White (New York: The Viking Press, 1948), p. 190.

¹⁰Washington Evening Star, March 20, 1945, reprinted in Cong. Rec. 79th Cong., 1st Sess., 1945, XCI, A1548; White, op. cit., pp. 248-250.

In late 1945 the Army convened a special board of general officers, headed by Lieutenant General Alvan C. Gillem, to submit recommendations on racial policy to the Secretary of the War and the Chief of Staff. The Army had decided, on the basis of reports by field commanders throughout the war and a thorough staff and field study, that its racial policies had not proved to be satisfactory.¹¹

The Gillem Board concluded that segregation should be maintained, but that the Army had to expand the number of jobs in which Negroes could serve.¹² The Report recommended eliminating the all-Negro Army division and the inclusion of a minority race unit in any larger Army unit. However, the minority race unit would be housed in separate barracks and have its own mess facilities. The War Department approved these recommendations, and the Army was operating under Gillem policy

¹¹Freedom to Serve, p. 49.

¹²"The Utilization of Negro Manpower in the Postwar Army," (1946), reprinted in U.S. Senate Armed Services Committee, Hearings on Universal Military Training, 80th Cong., 2d Sess., 1948, pp. 651-661.

when Truman issued Executive Order No. 9981.¹³ The Army also adopted an educational program to win tolerance for Negro troops.¹⁴

During World War II the Air Force racial policy was that of the Army--i.e., a 10 percent Negro enlisted strength restriction, segregated units, and greatly limited job opportunities.¹⁵ Following the war a number of Air Force staff memoranda recommended that Negro airmen, like white, be used solely on the basis of their individual qualifications, and that no Air Force jobs carry a racial restriction.¹⁶ However, these same memoranda insisted that segregation must be maintained because of social customs and possible difficulties if Negro and white airmen were placed in the same unit.¹⁷

In September, 1947, N. Stuart Symington became the first Secretary of the independent Air Force. Symington

¹³Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7495.

¹⁴Memorandum, Milton Stewart to Robert Carr, April 7, 1947, Records of the President's Committee on Civil Rights, Harry S. Truman Library.

¹⁵Freedom to Serve, p. 33.

¹⁶Ibid., p. 35.

¹⁷Ibid.

was known to have quietly implemented progressive labor and race relations views at his industrial plant, the Emerson Electric Manufacturing Company, St. Louis, and Walter White found him to be equally firm and sincere in his determination to achieve racial integration in the Air Force.¹⁸ Symington had taken some preliminary steps toward that goal when President Truman issued Executive Order No. 9981.

The Navy, on the other hand, by 1948 was beginning to make progress in implementing a policy of nondiscrimination. As long as Frank Knox was Secretary of the Navy, though, he had bitterly resisted efforts to change the status of Negroes in that service.¹⁹ When the 1940 Selective Service Act was passed, Knox announced that Negroes could not be accepted in any other capacity than as mess attendants.²⁰ Since the Navy then relied on voluntary recruitment, it was able to follow for a time this

¹⁸Walter White, How Far the Promised Land? (New York: The Viking Press, 1955), p. 91.

¹⁹Nichols, op. cit., pp. 45-46; White, A Man Called White, p. 220.

²⁰Langston Hughes, Fight for Freedom: The Story of the NAACP (New York: W. W. Norton & Company, Inc., 1962), p. 90; Dennis D. Nelson, The Integration of the Negro into the U.S. Army (New York: Farrar, Straus & Young, 1951), pp. 12-13.

discriminatory policy. However, after several memoranda from the President, the Navy began enlisting some Negroes in general service after June 1, 1942.²¹ In February, 1943, under a presidential directive, the Navy began to receive its manpower through Selective Service, and at the same time the War Manpower Commission insisted that the Navy accept Negroes in the same proportion as the other branches.²²

As in the Army, so in the Navy, considerations of military efficiency were an important factor in the reversal of policy. Because of limited billets, the Navy was forced to meet the problem created by racial segregation when Negroes entered in growing numbers in 1943.²³ The Navy created a Special Programs Unit to handle the Negro problem. The first step was to man two small seagoing craft entirely by Negroes. However, the Special Unit soon decided that all-Negro ships were no solution to the Navy's problem, since there were not enough trained Negroes to handle the many jobs on ships. The first real breakthrough

²¹Freedom to Serve, p. 18. Also consult Nelson, op. cit., pp. 14-23.

²²Ibid.

²³This account is summarized from Nichols, op. cit., pp. 57-60.

came when the Special Unit secured approval to include up to a maximum of 10 percent of the crews, Negroes with white crew members on twenty-five selected auxiliary ships. This was accomplished by late 1944.

When James Forrestal became Secretary of the Navy after Knox's death in 1944, he received permission from President Roosevelt to change the Navy racial policies. In 1945 Forrestal assigned Lester B. Granger, executive secretary of the National Urban League, to tour Navy bases and recommend specific action.²⁴ Subsequently, the Navy opened all general service assignments to Negroes and ordered that "in the utilization of housing, messing and other facilities, no special or unusual provisions will be made for the accommodation of Negroes."²⁵ From this point until issuance of Executive Order No. 9981, the Navy issued a series of directives designed to reinforce an integration policy.²⁶ The President's Committee on Civil Rights noted

²⁴Hughes, op. cit., p. 90; Nichols, op. cit., p. 62; White, How Far the Promised Land?, p. 94.

²⁵Circular Letter No. 48-46, February 27, 1946, reprinted in part in Freedom to Serve, p. 20.

²⁶Some of the more important directives, letters, and other documents in the transition of Navy racial policy are reprinted in Nelson, op. cit., pp. 197-226.

in 1947, however, that although the Navy had done a good job of verbalizing policy and had "tried fitfully to enforce the policy on certain lower levels," Navy had only one Negro commissioned officer in contrast to approximately thirteen hundred Army Negro commissioned officers.²⁷

Walter White, who talked with Forrestal in 1948 at President Truman's request, found him "quietly determined to achieve full integration while he was Secretary of the Navy."²⁸ In April, 1948, a representative of the National Association for the Advancement of Colored People testified before the House Committee on Armed Services:²⁹

" . . . in the last six months I would say there has been a relaxation of racial discrimination in the Navy. They are practicing democracy more than any other branch of the service--I mean actually doing it."

Pressures for Policy Changes

Seizing the opportunity presented by presidential emergency powers during World War II, the leaders of civil

²⁷Memorandum, Milton Stewart to Robert Carr, April 7, 1947, Records of the President's Committee on Civil Rights, Harry S. Truman Library.

²⁸White, How Far the Promised Land?, pp. 94-95.

²⁹U.S. House Armed Services Committee, Hearings on Selective Service, 80th Cong., 2d Sess., 1948, p. 6325.

rights organizations pressured the executive branch to meet their demands.³⁰ Two weeks after President Roosevelt had signed the Selective Service Act of 1940, a delegation that included A. Philip Randolph, Brotherhood of Sleeping Car Porters; T. Arnold Hill, Acting Secretary of the National Urban League; and Walter White, Executive Secretary of the National Association for the Advancement of Colored People, discussed with him discrimination against the Negro in the armed services and defense industries.³¹ The Negro leaders submitted a seven-point program for abolishing segregation in the military services.³² When no action resulted, and after fruitless requests to see the President again, Randolph originated the idea of a March on Washington--set for July 1, 1941.³³ Responding to this threat of a large demonstration, President Roosevelt again

³⁰Warren D. St. James, The National Association for the Advancement of Colored People: A Case Study in Pressure Groups (New York: Exposition Press, 1958), p. 113; White, How Far the Promised Land?, p. 91.

³¹White, A Man Called White, p. 186.

³²Hughes, op. cit., p. 90.

³³Ibid., pp. 83-84. The March on Washington Committee included, besides Randolph, Walter White, Frank Grosswaith of the Harlem Labor Union, Henry Craft of the Harlem YMCA, Lester Granger of the National Urban League, and Rayford Logan, historian.

received a delegation that included Randolph, who requested that the President issue an executive order to end discrimination in war industries and the armed services.³⁴ President Roosevelt did establish the Committee on Fair Employment Practice by Executive Order No. 8802, June 25, 1941,³⁵ and the March on Washington was called off, but Roosevelt did not issue an order desegregating the armed forces.

In 1944 civil rights organizations exerted pressure to secure favorable platform promises from the major parties. Delegates from twenty-five Negro organizations, with an estimated six and a half million members, met in New York June 17, 1944, to formulate a statement of Negro demands.³⁶ The statement stipulated that political parties and candidates seeking the Negro votes be committed to ending the segregation of Negroes in the armed forces.³⁷ The 1944 Democratic Platform contained a general statement on civil rights, but the Republican Platform pledged an

³⁴White, A Man Called White, pp. 190-193.

³⁵1 CFR Cum. Supp., p. 957.

³⁶The New York Times, June 20, 1944, 12:6.

³⁷Ibid.

immediate congressional inquiry to ascertain the extent to which mistreatment, segregation, and discrimination against Negroes in the armed forces impaired morale and efficiency, and promised subsequent corrective legislation.³⁸

Following World War II, representatives of civil rights organizations continued to pressure the President and the military authorities to desegregate the armed forces. After Truman assumed office, a delegation of six civil rights leaders met with the President September 19, 1945.³⁹ Walter White, the delegation's spokesman, recounts:⁴⁰

³⁸National party platforms are conveniently compiled in Kirk H. Porter and Donald Bruce Johnson (comp.), National Party Platforms: 1840-1956 (Urbana: The University of Illinois Press, 1956).

³⁹White, A Man Called White, p. 330. According to White, the delegation included James B. Carey, Secretary of the CIO; Boris Shishkin of the AFL; Dr. Herman Reissig, Federal Council of the Churches of Christ in America; Dr. Channing H. Tobias, Director of the Phelps-Stokes Fund; Leslie Perry, administrative assistant in the Washington office of the NAACP; and White. Carey, Shishkin, and Tobias were later appointed members of the President's Committee on Civil Rights.

⁴⁰Ibid., pp. 330-331. Cf. comments made by President Truman in a campaign speech in Harlem in 1952, reprinted in Louis W. Koenig (ed.), The Truman Administration: Its Principles and Practice (New York: New York University Press, 1956), pp. 117-121. See also statements by President Truman reprinted in Public Papers of the Presidents of the United States: Harry S. Truman, 1947 (1963), pp. 98-99, 479-480. Hereafter cited as Public Papers of the Presidents.

The President sat quietly, elbows resting on the arms of his chair and his fingers interlocked against his stomach as he listened with a grim face to the story of the lynchings in Georgia and Louisiana, the flood of viciously anti-Semitic, anti-Catholic, anti-labor, and anti-foreign-born literature with which more than sixty hate organizations were inundating the country, and of the blinding of Isaac Woodard. When I had finished, the President exclaimed in his flat, Midwestern accent, "My God! I had no idea it was as terrible as that! We've got to do something!"

President Truman immediately decided to create the President's Committee on Civil Rights with his contingent fund.⁴¹ The Committee's subsequent report, To Secure These Rights,⁴² provided the basis for the President's ten-point civil rights program, presented in a special message to Congress February 2, 1948.⁴³

A civil rights delegation again conferred with the President on March 22, 1948. At this time Grant Reynolds, Chairman of the Committee Against Jim Crow in Military Service and Training, presented seven proposals for eliminating segregation in the armed forces and warned

⁴¹White, A Man Called White, p. 331. The Committee was established by Executive Order No. 9808, 11 Fed. Reg. 14153.

⁴²A commercial edition was published by Simon and Schuster, New York, 1947.

⁴³Reprinted in Public Papers of the Presidents, 1948, pp. 121-126.

President Truman that mass civil disobedience would result if the draft law did not include antisegregation provisions.⁴⁴ Reynolds reported that the President gave him no

⁴⁴U.S. Senate Armed Services Committee, Hearings on Universal Military Training, 80th Cong., 2d Sess., 1948, p. 682. The proposed amendments were the following:

1. An amendment prohibiting all segregation and discrimination in the entire UMT or selective service program. Provision should be made . . . for injunction relief and writs of habeas corpus in Federal courts for a person discriminated against in selection (by any quota system as in World War II) or for a trainee subjected to any form of Jim Crow.

2. An amendment barring all Jim Crow in interstate travel for trainees in UMT or selective service uniform or a person in any other military uniform. Enforcement of segregation on busses, trains, planes, and boats should be made a Federal offense, with a provision for civil suits for damages.

3. An amendment making attacks on, or lynching of, a trainee in UMT or selective service uniform or a person in any other military uniform a Federal offense, with severe penalties. This provision should apply to local police as well as civilians.

4. An amendment ~~barring~~ the poll tax in Federal elections for trainees or draftees otherwise eligible to vote.

5. An amendment barring UMT or selective service camps in the South, on the grounds that Negro trainees would be subjected to local indignities and northern white trainees would be exposed for the first time to the rigid Jim Crow pattern.

6. An amendment clarifying control of the National Guard and forbidding Federal dictation of segregation and discrimination in the Guard.

7. An amendment, as recommended by the President's Committee on Civil Rights, "providing that no member of the armed forces shall be subject to discrimination of any kind by any public authority or place of public accommodation, recreation, transportation, or other service or business."

assurance that he would change the existing policy, and that Truman indicated the proposals should be enacted by Congress and not left to administrative bodies.⁴⁵

Reynolds also presented his proposals and repeated his threat of mass civil disobedience at the House and Senate hearings on selective service and universal military training. In addition, several representatives of other groups testified against segregation in the armed services.⁴⁶

American Negroes also took their grievances to the United Nations. In 1946 the National Negro Congress filed with the Economic and Social Council a petition seeking its influence to eliminate discrimination in the

The following amendment was added to the list when Reynolds appeared before the House Committee on Armed Services:

8. An amendment requiring fair employment practices of any company or individual selling goods or services to the government under any UMT or selective service program.

⁴⁵U.S. House Armed Services Committee, Hearings on Selective Service, 80th Cong., 2d Sess., 1948, p. 6420.

⁴⁶These groups included the National Youth Assembly against Military Training, the National Association for the Advancement of Colored People, the Committee to Abolish Segregation from the Universal Military Training Program, and the Americans for Democratic Action.

United States.⁴⁷ The following year the National Association for the Advancement of Colored People presented an annotated 154-page document to the United Nations Department of Social Affairs.⁴⁸ The Association did not expect that the petition would have immediate results, but rather hoped to influence public opinion on a national and an international scale in order to improve the status of the American Negro.⁴⁹

The President was influenced by the bearing that segregation practices in the United States armed forces had upon world opinion:⁵⁰

I felt also that any other course [than integration in the armed services] would be inconsistent with international commitments and obligations. We could not endorse a color line at home and still expect to influence the immense masses that make up the Asian and African peoples. It was necessary to practice what we preached and I tried to see that we did it.

⁴⁷Hughes, op. cit., p. 107.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰Years of Trial and Hope (Garden City, N.Y.: Doubleday & Company, Inc., 1956), p. 183.

Congressional Action

Armed services desegregation did not become an important legislative issue until the Eightieth Congress' long congressional battle over the armed forces manpower program.⁵¹ Many organizations felt that a fight should be made at that time for including a nonsegregation clause in the bill,⁵² and the principal battles on the manpower bill in both houses concerned segregation amendments.

Organizations interested in the nonsegregation clause, such as the Committee Against Jim Crow in Military Service and Training, threatened political reprisal and mass civil disobedience if segregation were not eliminated in the armed services.⁵³ The National Association for the Advancement of Colored People had supported the 1940..

⁵¹Adam Clayton Powell, Jr., Democrat of New York, introduced a bill to prohibit race segregation in the armed forces of the United States in each session of Congress from the 79th through the 83d, but each time the bill was referred to the Committee on the Armed Services and no further action was taken. Powell also offered an antisegregation amendment to every bill that came before the House pertaining to the armed forces from 1945 until 1954, except during the Korean conflict. Cong. Rec., passim.

⁵²Senator Wayne Morse, Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7246.

⁵³See pp. 32-34, supra.

Selective Training and Service Act, but in 1948 the board of directors formally opposed compulsory training "both because it is generally unsound in principle and the present legislation would permit the continuation of the present racial segregation and discrimination in the armed forces."⁵⁴

Subsequently, certain developments in the Senate Armed Services Committee caused great concern to the draft program sponsors and backers.⁵⁵ When Senator William Langer, Republican of North Dakota, tried unsuccessfully to get the Armed Services Committee to accept seven antisegregation amendments, he served notice that he would force to a voting showdown a proposal that virtually the complete civil rights program of President Truman be incorporated into the draft bill.⁵⁶ On the other hand, just before the committee vote on the bill, Senator Richard B. Russell, Democrat of Georgia, proposed an amendment to enable each

⁵⁴Included in the statement of Jesse O. Dedmon, Jr., U.S. Senate Armed Services Committee, Hearings on Universal Military Training, 80th Cong., 2d Sess., 1948, pp. 662-663.

⁵⁵The New York Times, May 27, 1948, 1:3; Walter Millis (ed.), The Forrestal Diaries (New York: The Viking Press, 1951), p. 439. Hereinafter cited as The Forrestal Diaries.

⁵⁶The New York Times, May 27, 1948, 1:3.

drafter to have the right to say that he preferred service in a unit of his own race.⁵⁷ The committee rejected the amendment 4-7,⁵⁸ and this defeat, according to Russell, was "because of the assurances we received from those in positions of high authority that they did not intend to prosecute this program [of integration]."⁵⁹ However, President Truman, responding to a question at his May 28 news conference, stated that the injection of the segregation issue into the congressional fight regarding the selective draft had not caused any change in his instructions⁶⁰ to the Secretary of Defense to eliminate discrimination within the armed forces.⁶¹

When Langer, as promised, offered his seven amendments from the Senate floor on June 7, the Senate showed

⁵⁷The Forrestal Diaries, p. 439.

⁵⁸Ibid. The Russell amendment was supported by Senators Harry F. Byrd, Democrat of Virginia; Lister Hill, Democrat of Alabama; Burnet R. Maybank, Democrat of South Carolina; and Russell.

⁵⁹Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 8994.

⁶⁰See p. 43, infra.

⁶¹The New York Times, May 28, 1948, 1:5, 9:6. The President made no delineation between racial "discrimination" and "segregation," a source of contention for Negro leaders. Negroes considered "segregation" to be evidence of discrimination as opposed to the "separate-but-equal" doctrine.

little inclination to tie the question of armed forces desegregation to the draft question.⁶² The Senate rejected six of the seven amendments.⁶³ Calls to stop debate were responded to without noticeable protest; three times the Senate approved motions to shelve the pending question, and thus it stopped debate instantaneously.⁶⁴ The vote on the Langer amendment to outlaw racial segregation in the armed forces had been construed earlier as one that might test the "Solid South" resistance.⁶⁵ Nevertheless, the amendment was tabled by a 67-6 roll call vote.⁶⁶ This indicated that Congress had little interest in prohibiting segregation in the armed forces.

⁶²Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7225.

⁶³In a surprise move the Senate, by a 37-35 vote, adopted the Langer proposal that a poll tax, as it concerned prospective voters in the armed forces, be suspended for the duration of the draft act. Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7261-7274. Reports had forecast a move to inject some Republican success into a concededly almost blank performance regarding civil rights during the current session of Congress, and this action seemed to be confirmation. The New York Times, June 8, 1948, 1:5, 5:2.

⁶⁴Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7226, 7252, 7260.

⁶⁵The New York Times, June 8, 1948, 5:2.

⁶⁶Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7226.

While Senator Langer was prompted to amend the Selective Service Bill because "this is the only chance left before we adjourn for carrying out our [Republican platform] promises,"⁶⁷ the Southern Senators made it clear that they would attempt to write a segregation clause into the draft bill. Unable to get the Armed Services Committee to accept the "voluntary segregation" amendment,⁶⁸ Senators Russell and Burnet R. Maybank, Democrat of South Carolina, offered it on the Senate floor after the night session on Langer's amendment. Russell, advancing his proposal, alerted the Senate to potential presidential action:⁶⁹

I have been unable to find any justification for any confidence in the argument that there is no danger of the adoption by Executive order of the same theory contained in amendments offered by the Senator from North Dakota. . . . On the eve of an election an administration would be subjected to great pressure if it were compelled, because of the failure to abolish segregation in the armed services, to face the threat of mass civil disobedience affecting three or four hundred thousand men and perhaps one million or more votes. It would

⁶⁷Ibid., p. 7228.

⁶⁸See pp. 37-38, supra.

⁶⁹Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 7356.

certainly be a temptation to yield rather than to have to go through with mass prosecutions all over the United States.

The Russell-Maybank amendment was rejected on June 9 by voice vote, and the Senate overwhelmingly adopted the Selective Service Bill.⁷⁰ The House action on it immediately bogged down into a civil rights conflict. House leaders had hoped the measure would pass by nightfall, but they abandoned this idea early after antidiscrimination and antisegregation amendments were offered by Jacob K. Javits, Republican of New York, and Adam Clayton Powell, Jr., Democrat of New York, and two days later by Leo Isacson, American Labor Party of New York.⁷¹ All three of these amendments were rejected by margins of more than sixty-nine votes.⁷² John Bell Williams, Democrat of Mississippi, offered an amendment similar to Senator Russell's, and this was rejected 88-24.⁷³

The House finally approved the bill on June 18. However, final action was almost blocked again when a

⁷⁰Ibid., p. 7500. 62 Stat. 604 (1948).

⁷¹Ibid., pp. 8389, 8393-8395, 8691-8695.

⁷²Ibid., pp. 8395, 8695, 8939.

⁷³Ibid., p. 8685.

two-man Senate filibuster for a time prevented the appointment of conference committee members.

Presidential Action

President Truman outlined his civil rights program in a special message to Congress February 2, 1948.⁷⁴ He did not request legislative action to desegregate the armed services, as the President's Committee on Civil Rights had recommended. Stephen J. Spingarn, son of a former president of the NAACP and at the time Assistant General Counsel in the Treasury Department, was detailed to the White House in mid-January to assist Clark Clifford, special counsel to the President, in preparing legislation to carry out the recommendations to be made by the President in the civil rights message. Spingarn and others who participated in the drafting sessions decided that legislation to end racial segregation in the armed forces was not needed, but that Clifford should discuss with Forrestal administrative action and include a reference to future action in the message to Congress.⁷⁵

⁷⁴Reprinted in Public Papers of the Presidents, 1948, pp. 121-126.

⁷⁵"Civil Rights File," Spingarn Papers, Harry S. Truman Library. Those who participated in the drafting of

Although the President announced in his civil rights message to Congress that he would "shortly issue an Executive Order containing a comprehensive restatement of the Federal non-discrimination policy, together with appropriate measures to ensure compliance," he had decided to use less formal means for dealing with segregation in the armed forces:⁷⁶

During the recent war and in the years since its close we have made much progress toward equality of opportunity in our armed services without regard to race, color, religion, or national origin. I have instructed the Secretary of Defense to take steps to have the remaining instances of discrimination in the armed services eliminated as rapidly as possible. The personnel policies and practices of all the services in this regard will be made consistent.

On May 11, 1948, the Secretaries of Defense, Army, Navy, and Air Force met with members of the White House staff to decide on the means for implementing the relevant paragraph of the President's Civil Rights Message, and at

the Omnibus Civil Rights Bill of 1946, besides Spingarn, included Robert Carr, George M. Elsey, Charles Murphy, and Philleo Nash.

⁷⁶If the "instruction" were in writing, it was not published in the Code of Federal Regulations. It is possible that following Clifford's discussions with Forrestal, the President used the Civil Rights Message as the means for indicating presidential policy with respect to discrimination in the armed services.

that time favored creating a Board on Troop Policy in the Office of the Secretary of Defense.⁷⁷ Thus, at least as late as May 13, 1948, the President did not intend to issue an executive order, but rather intended to press for the gradual desegregation of the armed services at the departmental level.

What occurred between May 13 and July 26 to prompt the issuance of Executive Order No. 9981? As discussed earlier, armed forces desegregation became an important point of conflict in the congressional controversy over a new draft law. The conflict was politically charged, since Langer proposed amendments in a move to fulfill Republican platform promises, and Senator Russell, who offered the segregation amendment, was up for reelection.

Also, in the interim, the Democratic Party held its national convention. In a maneuver to keep the South from bolting, Truman supporters backed a general civil rights plank that had the advantage of not committing the Democratic national convention to the entire 10-point program President Truman had urged on Congress, and yet subscribed to the ideal he had stated. Nevertheless, after

⁷⁷Draft Memorandum, Clark Clifford to the Secretary of Defense, May 13, 1948, Nash Files, Harry S. Truman Library.

an amendment reasserting the principle of states' rights, offered by the Southern delegations, was overwhelmingly defeated, the Americans for Democratic Action, under the leadership of Hubert Humphrey, seized the opportunity and offered a specific plank supporting the President's program and won by a 651-1/2 — 582-1/2 vote. One of the four specific points in the amended plank was "the right of equal treatment in the service and defense of our nation."⁷⁸

At 2 A.M., July 15, Truman made his acceptance speech, in which he sprung his first campaign surprise.⁷⁹ Toward the end of the speech he announced that he was going to call Congress back into session July 26 and ask it to pass the legislation it advocated, including civil rights

⁷⁸The New York Times, July 16, 1948, includes commentary, the Democratic Party platform, and President Truman's acceptance speech.

Five of the other eight party platforms adopted in 1948 included specific clauses opposing racial segregation in the armed services. The Progressive Party platform called for a "Presidential proclamation ending segregation and all forms of discrimination in the armed services and Federal employment"; the Republican Party platform stated opposition "to the idea of racial segregation in the Armed Services of the United States"; the Communist Party platform demanded "an Executive Order ending every form of segregational discrimination in the armed forces and the government services"; and the Socialist Party platform declared that "segregation must be abolished in the armed forces." The source used are platforms compiled by Porter and Johnson, op. cit., passim.

⁷⁹Truman, Years of Trial and Hope, p. 206.

measures. President Truman wrote in his memoirs:⁸⁰

Of course I knew that the special session would produce no results in the way of legislation. But I felt justified in calling Congress back to Washington to prove to the people . . . [that the Republicans] would run out on their platform.

The New York Times reported that Truman had decided to recall Congress at least a week prior to his acceptance speech.⁸¹ The President decided after this time and probably after the convention had amended the Party Platform's civil rights plank to issue Executive Order No. 9981 and the companion order, No. 9980, in order to show that he would act with regard to civil rights when the Republicans would not.

Oscar R. Ewing, Federal Security Administrator, backed Truman's position as a political imperative and felt that the Orders did play a part in the election.⁸² After the convention, Ewing told the President that he must immediately do everything within his power as Chief Executive

⁸⁰Ibid., pp. 207-208.

⁸¹July 16, 1948, 3:2.

⁸²For the following account, based on interviews with Nash, Ewing, and Leva, of the drafting of Executive Order No. 9981, I am indebted to Nichols, op. cit., pp. 85-88.

to carry out the civil rights provisions of the Democratic platform, or the Democrats would lose the Negro vote.

"There was never a question where Truman stood," Ewing stated later. "Any question he had was how far he could go."

Phillip Nash, Clark Clifford, Ewing, and others drafted the orders. Nash urged the creation of a committee within the military establishment to push steps toward desegregation, with presidential appointees as members to give it stature and authority. "Let the committee find out in each branch where segregation hurts efficiency," he advised. "Don't spell it out in advance."

Oscar R. Ewing took the proposed executive order on armed forces desegregation to Forrestal for military clearances. Forrestal, according to Marx Leva, then his special assistant, urged that the order call for progress "as rapidly as feasible," rather than lay down any flat edict. He believed that this approach would give the services an opportunity to work out methods of compliance, rather than to arouse their antagonism.

Forrestal also said he was "sure" there would be no objection from Symington or Secretary of the Navy Sullivan, but he asked Ewing to discuss the proposed order

with Kenneth C. Royall, Secretary of the Army.⁸³ Royall was known to be reluctant to change segregation policies.⁸⁴ Royall believed that "the question of integration involves a vital problem of social reform to be achieved first by the people of the United States and then by the United States Army."⁸⁵

Nash later commented that "political necessity dictated the timing for steps on which much patient preparation had been made, and provided the opportunity to accomplish the results the President wanted."⁸⁶ The role of the equal rights directives in the 1948 election, Nash observed, "shows the importance of politics in making progress toward American ideals To meet the challenge of the Democratic platform, after a convention fight, required the Chief Executive to take action."

⁸³The New York Times, June 27, 1948, 56:1.

⁸⁴For example, the National Association for the Advancement of Colored People, at its 1948 convention, passed a resolution that called for Royall's resignation because of his anti-Negro sentiments and policies. The New York Times, June 27, 1948, 56:1

⁸⁵Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 9636.

⁸⁶Nichols, op. cit., pp. 8588.

On the eve of his appearance before the special session of Congress, President Truman announced on July 26 the civil rights executive orders, one relating to fair employment practices within the federal government, and the other relating to equality of opportunity and treatment in the armed services.

Executive Order No. 9981 did not create much reaction. Most commentators interpreted it as a politically motivated move and regarded its effect with skepticism. When queried by a Washington Post reporter, spokesmen for the armed services were noncommittal.⁸⁷ However, one unnamed federal official expressed the opinion that high officers would not for a long time carry integration down to the squad, as this would involve white men and Negroes eating and sleeping in the same quarters.⁸⁸ Since the order included no deadline for action and did not mention segregation, this official regarded President Truman's action as "a pretty good political approach," that would not too greatly affront Southern Democrats.⁸⁹

⁸⁷July 27, 1948, 7:3.

⁸⁸The New York Times, July 27, 1948, 4:3.

⁸⁹Ibid.

Executive Order No. 9981 followed by less than twenty-four hours the adoption of the Progressive Party platform, that called for "a Presidential proclamation ending segregation and all forms of discrimination in the armed services and Federal employment." Consequently, Senator Russell charged that the orders were "articles of unconditional surrender to the Wallace convention and to the treasonable civil disobedience campaign organized by the Negroes, by A. Philip Randolph and Grant Reynolds."⁹⁰

The Order, however, did not immediately satisfy Randolph, who labelled it "a misleading move, obviously made for political purposes and deliberately calculated to obscure the issue of segregation and to confuse the people at home and abroad."⁹¹ Randolph again called upon Negro and white youths to refuse to register for the draft unless segregation were abolished in the armed forces.⁹² However, by September, the Negro Press had abandoned its campaign against the Army's racial policy, civil rights leaders had pledged to support the Committee established by

⁹⁰Ibid., July 28, 1948, 5:1.

⁹¹The Washington Post, July 28, 1948, 5:2.

⁹²Ibid.

the Order, and all important opposition to the draft on the basis of the Army's race policy had disappeared.⁹³

Extension of remarks in the Congressional Record was light. Only three Congressmen--Ed Gossett of Texas, and Overton Brooks and Leonard Allen of Louisiana--commented on the Order.⁹⁴

Implementation

Executive Order No. 9981, reprinted in Appendix I of this study, provided many loopholes for those who might seek them. The policy declaration included no time limit for implementation and provided a further possibility for delaying tactics by stating that the policy was to be effected as rapidly as possible "without impairing efficiency or morale." The Committee on Equality of Treatment and Opportunity in the Armed Services was to be "advisory" to the National Military Establishment. Therefore, much depended upon the committee members and their decisions, the attitude of the military command, and the support of the President.

⁹³Memorandum, Donald Dawson to the President, September 9, 1948, Nash Files, Harry S. Truman Library.

⁹⁴Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, A4645, A4650, A4653.

Charles Fahy, former Solicitor General, was appointed chairman of the Committee on Equality of Treatment and Opportunity in the Armed Services. President Truman met with the Secretaries of the military departments and the Committee at the first meeting, on January 12, 1949. The President told them that he wanted "a survey of the situation" and hoped for a concrete proposition not later than the first of June so that he would have an outline of the situation before Congress adjourned, "in case we need to ask for any legal amendments to the law"⁹⁵

The Committee decided, however, that the report to the President should represent not a future objective, but a program in being.⁹⁶ The Committee believed that reforms would be more readily accepted and make headway faster if they represented decisions mutually agreed upon by the services and the Committee.⁹⁷ The President approved this plan of work, and all of the Committee's recommendations were "approved and accepted by the President, the Secretary of Defense and the Service secretaries."⁹⁸

⁹⁵Transcript of Meeting, President's Committee on Equality of Treatment and Opportunity in the Armed Services, OF 1285-0, Truman Papers, Harry S. Truman Library.

⁹⁶Freedom to Serve, p. 2.

⁹⁷Ibid., p. 3.

⁹⁸Ibid., p. vii.

When the Committee reported, the recommendations were already in effect.

Spurred by the President's Executive Order, the Air Force completed its own desegregation plan.⁹⁹ Symington called on Truman. "Mr. President," he said, "do you mean this order? Because if you do it's going to be enforced."

"I mean every word of it," answered Truman.¹⁰⁰

Symington then conferred with all the Air Force generals who were of Southern family or background and told them that he personally believed that the order was for the benefit of the fighting forces, but that even if he did not agree, "the order of the Commander-in-Chief would be enforced to the letter in this branch of the service." Symington told the generals that if they dissented, he wanted them to say so then. All agreed to comply.¹⁰¹ Next, Symington consulted James Carey, who recommended George Weaver, a Negro official of the International Electricians' Union, to make policy suggestions. Weaver agreed to help.¹⁰²

⁹⁹Ibid., p. 35.

¹⁰⁰Paul I. Wellman, Stuart Symington: Portrait of a Man with a Mission (Garden City, N.Y.: Doubleday and Company, Inc., 1960), pp. 135-136.

¹⁰¹Ibid., p. 136.

¹⁰²Ibid.

By November, 1948, the Air Force had framed a policy and a detailed program for effectuating it within a year. These plans were forwarded by the Secretary of Defense to the President's Committee on Equality of Treatment and Opportunity in the Armed Services for the first meeting in January, 1949.¹⁰³

The Committee thought the proposals represented a great advance over existing policy. Nevertheless, it had serious reservations regarding two provisions in the new program--the 10 percent limitation upon Negro strength in any one unit, and the discretion left to commanders to determine if individual Negroes were best suited for assignment to racial units.¹⁰⁴

On April 6, 1949, eight months after President Truman issued Executive Order No. 9981, Secretary of Defense Louis Johnson sent to the Secretaries of the three military departments a memorandum, in which he reiterated the President's policy and asked the services to prepare a program to carry out the Executive Order and to submit replies by May 1.¹⁰⁵

¹⁰³Freedom to Serve, pp. 36-37.

¹⁰⁴Ibid., p. 38.

¹⁰⁵Copy of Memorandum, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

In reply to this memorandum the Air Force resubmitted its earlier proposals in essentially their original form, significantly omitting the two provisions about which the Committee had expressed reservations.¹⁰⁶ The Secretary of Defense approved the new Air Force policy concerning Negro personnel May 11; the Air Force began implementing the new program June 1, 1949, and voluntarily submitted periodic progress reports to the Committee.¹⁰⁷ Late in November, six months after orders had gone to the field commanders, Air Force Headquarters notified the Committee that the Air Force was prepared for a thorough field investigation of the results of the new policy. On this inspection trip the Committee's staff found only one segregated unit.¹⁰⁸

¹⁰⁶Freedom to Serve, p. 38; Memorandum, W. Stuart Symington to Chairman, Personnel Policy Board, Office of Secretary of Defense, April 30, 1949, and drafts of the Air Force Policy Statement and implementing directives, all in the Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹⁰⁷Freedom to Serve, p. 39. Copies of the press release of May 11, 1949, and Air Force Letter 35-3, that contained the new policy, are in the Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹⁰⁸Freedom to Serve, p. 39.

The Committee found little to criticize in the Navy training and assignment policies, but was concerned that the opportunities the Navy offered had not attracted a larger number of Negroes to enlist for general service.¹⁰⁹ The Committee made recommendations designed to increase the number of Negroes in general service, as well as in the Naval Reserve Officers Training Corps program, and to correct the inequality in the Steward's Branch. These proposals were all accepted by the Navy.¹¹⁰

The Committee concluded that the attitude of those in command was a substantial factor in the success of the new Air Force and Navy racial policies.¹¹¹ The situation was markedly different with regard to the Army, in which some of the highest ranking officials maintained that the President's Order did not require an end to segregation.¹¹²

¹⁰⁹Ibid., p. 27.

¹¹⁰Copy of Memorandum, marked "Confidential," Dan A. Kimball, Acting Secretary of the Navy to the Secretary of Defense, May 23, 1949, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹¹¹Freedom to Serve, p. 44.

¹¹²Nichols, op. cit., p. 97.

The Army was slow responding to Secretary Johnson's April 6 directive, and when it did so the Secretary of Defense asked that the policy proposals be revised.¹¹³ Secretary Johnson finally approved on September 30 Army's fourth reply to his directive.¹¹⁴ The new Army proposals included two of the four recommendations that the Fahy Committee made in May--all jobs open to qualified personnel regardless of race and no racial quota for school attendance.¹¹⁵

Evidence in the Truman Papers indicates that the Army, rather than the Department of Defense, may have issued the September 30 press release regarding Johnson's approval of the new Army policy, and that the Army had conveyed the impression to the Department of Defense that the statement had been approved by the Fahy Committee. The

¹¹³Jacob K. Javits, U.S. House Armed Services Committee, Hearings on Selective Service Act Extension, 81st Cong., 2d Sess., 1950, p. 5222.

¹¹⁴Copy of Press Release, September 30, 1949, Records of The President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹¹⁵Copy of Memorandum, Gordon Gray to the Secretary of Defense, September 30, 1949, Records of The President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

press release implied, but avoided stating, that the Fahy Committee had approved the plan.¹¹⁶

The Army was equivocal on the Fahy Committee's recommendation that the restriction on assignment of Negroes be removed, and Secretary Gray promised only to continue study of the fourth recommendation, the abolition of the racial quota.

Army and the Committee were slow to resolve their differences on the problems of assignment and the racial quota. Despite active White House support of the Committee,¹¹⁷ Chairman Fahy tried to reconcile the differences without drawing the White House, or the public, further into the controversy.¹¹⁸ The Committee and the Army, in

¹¹⁶All in the Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹¹⁷David K. Niles met with General Byers, accompanied by Colonel McFayden, November 31, 1949, and immediately afterwards McFayden directed work to begin on a plan to substitute for the existing racial quota. E. W. Kenworthy, executive secretary of the Fahy Committee, noted: "I gather, by Niles' statement that the Army's rewrite of Circular 124 would have to be acceptable to the Committee before the White House would approve it." Memorandum, E. W. Kenworthy to Charles Fahy, November 22, 1949, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹¹⁸Memorandum, Worthington Thompson to Mr. Bendetsen, September 9, 1949, Records of the Committee on

consultation, finally worked out a policy and procedure on assignment that took into account the number of men involved and the time required to screen, train, and reassign them. As a result of these discussions between Fahy, Gray, and General J. Lawton Collins, Chief of Staff of the Army, the Army issued new instructions on Negro manpower utilization on January 10, 1950.¹¹⁹

Secretary of the Army Gordon Gray explained that the new regulations contemplated the mandatory transfer of men in the critical specialties and the permissive transfer where an Army Commander thinks it desirable, but that "there is no policy of elimination of segregation in the Army at the present time."¹²⁰ The reconciliation of views

Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library. Also, Kenworthy in a Memorandum to Fahy, October 29, 1949, stated: "I still believe, despite delays and Army obstruction, that our recommendations and our tactics are sound, and that we shall accomplish more in the end by keeping doggedly at our work rather than by making a public scene." Records of the Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹¹⁹Letter, Frank Pace, Jr., Secretary of the Army to David K. Niles, Administrative Assistant to the President, February 21, 1951, OF 93-B, Truman Papers, Harry S. Truman Library. A copy of the instructions, Special Regulations No. 600-629-1, are included in this file.

¹²⁰U.S. House Armed Services Committee, Hearings on Selective Service Act Extension, 81st Cong., 2d Sess., 1950, p. 5149.

on the racial quota was even more troublesome. In January the White House urged Fahy to have the Committee and the Army arrive at a solution to the quota problem as soon as possible.¹²¹ Finally in March the Army decided to abolish the quota, but to do so without advance publicity.¹²² Apparently some in the Army command felt that they would inevitably lose the battle for segregation policies and might as well go ahead and act and get the credit for it.¹²³

With the Army's abolition of the racial quota in a routine order to field commanders on March 27, 1950, the Committee's principal recommendations to the Army had been accepted.¹²⁴

Although opinions differ on the effect of the President's Order, backed by the Fahy Committee's actions;

¹²¹Memorandum for the President's Committee by Charles Fahy, February 1, 1950, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹²²Memorandum for the President's Committee by Charles Fahy, March 8, 1950, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹²³Memorandum, E. W. Kenworthy to Charles Fahy, November 22, 1949, Records of the President's Committee on Equality of Treatment and Opportunity in the Armed Services, Harry S. Truman Library.

¹²⁴Army Staff Message, March 27, 1950, reprinted in Freedom to Serve, p. 82.

on the Army's racial policies,¹²⁵ there is considerable agreement that, in any case, the Army would not have moved as speedily toward desegregation had not the Korean War begun in June, 1950.¹²⁶ Even then, General MacArthur refused to use to their fullest capacity the Negro troops that were available, or to integrate them.¹²⁷ Segregation practices continued until General MacArthur was replaced by General Matthew Ridgway, who requested and received permission to integrate all American troops under his command.¹²⁸

June 30, 1954, was the scheduled deadline for the termination of any remaining all-Negro units in the armed forces.¹²⁹ The progress report issued January 1, 1955, by the Defense Department announced that "there are no longer any all-Negro units in the Services."¹³⁰

¹²⁵See Nichols, op. cit., pp. 96-97.

¹²⁶Eli Ginzberg, The Negro Potential (New York: Columbia University Press, 1956), p. 87; Nichols, op. cit., p. 97.

¹²⁷Nichols, op. cit., pp. 113-116.

¹²⁸Ginzberg, op. cit., pp. 86-87; White, How Far the Promised Land?, p. 98.

¹²⁹Integration in the Armed Services: A Progress Report Prepared by the Office of the Assistant Secretary of Defense (Manpower and Personnel), January 1, 1955, p. 3.

¹³⁰Ibid., p. 3.

President Truman relieved the Committee of its assignment July 6, 1950, but left in effect Executive Order No. 9981 in the event that at some later date it might be desirable to examine the effectuation of the Committee's recommendations.¹³¹

The success in implementing the Order in seven years has been attributed in part to the fact that from the start of concrete planning to end armed forces segregation around 1952, there was little publicity.¹³² An Army general staff officer explained:¹³³

"We agreed that there would be no publicity. We were afraid that if there were a lot of stories in the papers, Southern Congressmen would have to get up on their hind legs and oppose it. We wanted to get it done without fanfare and then tell about it."

Subsequent Congressional Action

Some Southern Congressmen did oppose armed forces desegregation efforts, however. Arthur Winstead, Democrat of Mississippi, in an immediate reaction to

¹³¹Letter, President Truman to Charles Fahy, July 6, 1950, OF 1285-0, Truman Papers, Harry S. Truman Library.

¹³²Nichols, op. cit., p. 134.

¹³³Quoted in ibid., pp. 134-135.

President Truman's Executive Order No. 9981, introduced a bill "to strengthen the national defense by making it possible for persons drafted under the Selective Service Act of 1948 to choose the type of units in which they serve."¹³⁴ On the other hand, Isidore Dollinger, Democrat of New York, on January 13, 1949, introduced a bill to prohibit racial segregation in the armed forces,¹³⁵ and Congressman Javits, January 12, 1950, introduced a resolution to authorize an investigation into segregation and discrimination in the armed services.¹³⁶ The bills and resolution were referred to committees and no further action was taken.

Segregation in the armed forces again received serious congressional attention in 1950 when the Eighty-First Congress considered extending the 1948 Selective Service Act. Both Senate and House Armed Services Committees

¹³⁴Cong. Rec., 80th Cong., 2d Sess., 1948, XCIV, 9550.

¹³⁵Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 294.

¹³⁶Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 366. In offering his resolution, Javits argued that segregation and discrimination still persisted a year and a half after the President's Executive Order and that "Congress should at the very least oversee the liquidation of the problem of segregation in the armed forces." Ibid., pp. 357-358.

held hearings on draft extension and considered various proposed antisegregation amendments.¹³⁷ The Senate Armed Services Committee approved an amendment (offered by Richard Russell) that was essentially the same "voluntary segregation" proposal rejected by the Senate Armed Services Committee in 1948 and subsequently rejected on the Senate floor. During floor consideration of the committee bill, Senator Scott Lucas, majority leader, moved to strike the Russell amendment and won by a 42-29 vote on June 21.¹³⁸

The Russell plan defeat cleared the way for passage of the draft extension bill, and Senator Humphrey decided not to offer the series of antisegregation amendments he had prepared because he feared a filibuster at a time when "the urgency of the situation forbade the risk of such a development."¹³⁹ During the House floor action on

¹³⁷ Consult U.S. House Armed Services Committee, Hearings on Selective Service Act Extension, 81st Cong., 2d Sess., 1950, and U.S. Senate Armed Services Committee, Hearings on Selective Service Extension Act of 1950 and Manpower Registration and Classification Act, 81st Cong., 2d Sess., 1950.

¹³⁸ Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 8995-8996. The next day Russell again tried to write into the Senate bill a plan permitting inductees and enlistees to choose to serve in segregated units and was defeated 45-27. Ibid., pp. 9073-9074.

¹³⁹ The New York Times, June 22, 1950, 1:5, 6:3.

the bill, Representatives Powell and Javits had offered similar antisegregation amendments because the Army "has resisted and the time has come now for the Congress to act."¹⁴⁰ Both were overwhelmingly defeated.

In the Eighty-Second Congress, during consideration of the 1951 Amendments to the Selective Service Act, Representative Winstead got the House Armed Services Committee, in a closed-door meeting, to accept by a 20-11 vote an amendment that would have given men the right to choose whether or not they wished to serve in segregated units.¹⁴¹ The chairman of the committee, Carl Vinson of Georgia, voted against the rider because he said the military leaders were opposed to it.¹⁴² Walter White relates that at considerable expense, delegations were brought to Washington from key states to oppose the Winstead amendment.¹⁴³

The Committee voted 32-3 to report the bill and on April 12, 1951, Melvin Price, Democrat of Illinois and

¹⁴⁰Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 7678, 7682.

¹⁴¹Chicago Defender, March 31, 1951, reprinted in Cong. Rec., 82d Cong., 1st Sess., 1951, XCVII, A1936.

¹⁴²Ibid.

¹⁴³White, How Far the Promised Land?, p. 95.

a member of the Armed Services Committee, offered an amendment to strike out the Winstead amendment.¹⁴⁴ The Price amendment passed by a 178-126 teller vote.¹⁴⁵

Representative Powell introduced his bill to prohibit race segregation in the armed forces the last time on January 3, 1953,¹⁴⁶ and on April 29, 1954, he announced:¹⁴⁷

For the 10 years that I have been a Member of this House of Representatives I have consistently voted against appropriations for the Armed Services because of the policy of segregation carried forward by our Armed Forces. I am extremely pleased, therefore, to stand here today and to announce with a clear conscience that I can vote for appropriations for the Defense Department of our Nation. Today, there is not a single segregated arm of our Defense Department. The last segregated unit in the Army was abolished within the past few days.

Subsequent administrative and congressional activity relative to the Negro in the armed services has focused on segregation in the National Guard and equality

¹⁴⁴Cong. Rec., 82d Cong., 1st Sess., 1951, XCVII, 3752.

¹⁴⁵Ibid., p. 3768.

¹⁴⁶Cong. Rec., 83d Cong., 1st Sess., 1953, XCIX, 64.

¹⁴⁷Cong. Rec., 83d Cong., 2d Sess., 1954, C, 5778.

of opportunity for members of the armed forces and their dependents in the civilian community.¹⁴⁸

Conclusion

President Truman was willing to act affirmatively in the field of civil rights and in the specific problem area of armed forces desegregation. The decision, therefore, was that of choosing between alternatives to accomplish this end.

The President's Committee on Civil Rights recommended legislation to desegregate the armed forces, but the President chose not to include a request for legislation in his civil rights message to Congress. This decision was probably made because of competing civil rights priorities and because desegregation of the armed forces could be carried out administratively. The President could have supported an antisegregation amendment when the issue was

¹⁴⁸In 1962 President Kennedy established a Committee on Equality of Opportunity in the Armed Forces, headed by Gerhard A. Gesell, "to review the current situation both within the services and in the communities where military installations are located to determine what further measures may be required to assure equality of treatment for all persons serving in the Armed Forces." Letter to the Chairman of the Committee on Equality of Opportunity in the Armed Forces, June 22, 1962, Public Papers of the Presidents, 1962, p. 508.

injected into the congressional debate over selective service. He opposed such an amendment, probably because of the competing and overriding priority of draft legislation.

The President might have achieved armed services desegregation gradually by means of directives and instructions to his subordinates and other informal pressures. He had apparently chosen this course at least as late as May, 1948. Therefore, the overriding motivation in selecting the alternative of the executive order and in the timing of its issuance was probably the political one of providing an asset for the Democrats in the 1948 campaign.

President Truman knew that he was not restricted by overwhelming administrative opposition. The Executive Order speeded up a process already under way in the Navy, and beginning in the Air Force and Army. The fact that the Executive Order was fully implemented seven years after its issuance is not so much to the credit of this presidential instrument as to the members of the committee, the attitude of the military command, support from the White House, and (in the case of the Army) to the accident of the Korean conflict.

No bills requiring desegregation of the armed services were reported from committee in either the Senate or

the House, and Congress had shown an unwillingness to tie the civil rights issue to selective service legislation, when the issue arose in 1948. Nevertheless, Congress tacitly approved the Executive Order by failing to pass legislation permitting segregated units in the armed forces.

On the basis of these interpretations of the evidence, the conclusion seems warranted that the President uses the formal instrument of the executive order to make public policy in response to a problem that is acute enough to draw the attention of interest groups and at least some congressmen, but not sufficient support for congressional action. Furthermore, he may time the issuance of the order for party advantage.

CHAPTER III

FAIR EMPLOYMENT PRACTICES: PRESSURES AND RESPONSE

Presidents Harry S. Truman, Dwight D. Eisenhower, and John F. Kennedy each responded to pressures for national governmental action by issuing executive orders that established policies of fair employment practices¹ in government and in private enterprise operating under government contracts. Six executive orders are considered:

1. Executive Order No. 9980,² issued by President Truman on July 26, 1948, required a policy of nondiscrimination in government employment and established in the Civil Service Commission a Fair Employment Board with coordinating and advisory responsibilities.

¹ "Fair employment practices," "nondiscriminatory employment practices," and "equal employment opportunity," are terms that are used interchangeably in this chapter to mean no distinction in any personnel action that affects the opportunity for advancement or financial reward of an employee--or applicant for employment--is made on the basis of one or more of the following criteria: race, color, religion, ancestry, national origin, or sex. The discussion focuses on racial discrimination against Negroes.

² 13 Fed. Reg. 4311. See Appendix II for text of Executive Order No. 9980.

2. Executive Order No. 10479,³ issued by President Eisenhower on August 13, 1953, established the Government Contract Committee to ensure that contracting agencies complied with the nondiscrimination provisions required in government contracts.
3. Executive Order No. 10557,⁴ issued by President Eisenhower on September 3, 1954, revised and strengthened the nondiscrimination clause required in all government contracts and appropriate sub-contracts.
4. Executive Order No. 10590,⁵ issued by President Eisenhower on January 18, 1955, established the Committee on Government Employment Policy and strengthened the program for ensuring nondiscrimination in government employment.
5. Executive Order No. 10925,⁶ issued by President Kennedy on March 6, 1961, established a Committee

³18 Fed. Reg. 4899. See Appendix III for text of Executive Order No. 10479.

⁴19 Fed. Reg. 5655. See Appendix IV for text of Executive Order No. 10557.

⁵20 Fed. Reg. 409. See Appendix V for text of Executive Order No. 10590.

⁶26 Fed. Reg. 1977. See Appendix VI for text of Executive Order No. 10925.

on Equal Employment Opportunity with increased powers and responsibilities for implementing non-discrimination policies in both government and private enterprise under government contracts. The Order included a revised nondiscrimination clause mandatory in all government contracts and appropriate subcontracts.

6. Executive Order No. 11114,⁷ issued by President Kennedy on June 22, 1963, extended the authority of the President's Committee on Equal Employment Opportunity to include contracts for construction partially or wholly financed by federal funds.

The first part of this chapter analyzes some political elements that influenced presidential decisions. These factors include the adequacy of existing national policy, the existence of discrimination in employment practices, the limitations on presidential action, and the pressures for legislative action. Because of the importance of legislative-executive interaction in policy-making, the second part outlines the history of the disposition of fair employment practices bills in Congress

⁷28 Fed. Reg. 6485. See Appendix VII for text of Executive Order No. 11114.

between 1948 and 1964. The third section sketches the actions taken by each President--legislative leadership and executive policy-making--and suggests the factors responsible for the alternative chosen at a particular time.

This chapter presents evidence that the President seeks legislation when widespread demand for it exists and when his policy goals cannot be attained administratively. Furthermore, the President uses the executive order to establish general public policy if Congress will not act, or instead of recommending legislation if the President decides that bills are not likely to pass or that he might jeopardize competing legislative priorities.

Factors Prompting Decisions

Existing National Policy

One of the elements of the political environment in which the President makes his decisions is current governmental policy. A review of employment policies prior to 1945 reveals that President Truman and his successors responded to an emerging national trend when they issued executive orders banning discriminatory employment practices.

By the time Truman was inaugurated, Congress had enacted at least twenty-one different statutes or riders

to appropriation acts forbidding racial or religious discrimination in matters other than employment.⁸ The Supreme Court held in 1948 that "the federal policy reflected in acts of Congress indeed bars . . . discrimination. . . ."⁹

With regard to employment, the Civil Service Act of 1883¹⁰ committed the executive branch to make civil service appointments on the basis of merit and fitness. Since the act did not specifically mention racial discrimination, the Civil Service Commission was unable to enforce a policy of nondiscrimination in government employment.¹¹ On November 7, 1940, the civil service rules prohibited discrimination because of race for the first time.¹² Three weeks later Congress included a nondiscrimination clause

⁸U.S. House Labor Committee, Prohibiting Discrimination in Employment: Report to Accompany H.R. 3986, House Report 2016, 78th Cong., 2d Sess., 1944, p. 4. Cf. U.S. House Labor Committee, To Prohibit Discrimination in Employment: Hearings on H.R. 3986, H.R. 4004, and H.R. 4005, 78th Cong., 2d Sess., 1954, II, p. 154.

⁹Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28, 42 (1948).

¹⁰22 Stat. 403 (1883).

¹¹Eleventh Report of the United States Civil Service Commission, July 1, 1893 to June 30, 1894 (1895), p. 321.

¹²Executive Order No. 8587, 5 Fed. Reg. 4445.

in the Classification Extension Act of 1940,¹³ but a White House staff memorandum interpreted this provision as applying only to the classification of employees and not to their actual hiring or firing.¹⁴

Despite these congressional and executive declarations of nondiscriminatory employment policies, no supporting administrative machinery or sanctions for enforcement existed prior to World War II. With the war's manpower demands, scattered protests against discriminatory employment practices in the national defense industries appeared. In early 1941 A. Philip Randolph, President of the Brotherhood of Sleeping Car Porters, called a conference of Negro leaders to discuss ways for securing a more equitable share of the new defense-related jobs.¹⁵ Out of this conference grew the first March on Washington Movement that influenced President Franklin D. Roosevelt¹⁶ to establish the Committee

¹³Sec. 681(e), 54 Stat. 1212 (1940) (Ramspeck Act).

¹⁴Memorandum for the Files, April 1, 1947, Nash Files, Harry S. Truman Library.

¹⁵Louis Kesselman, The Social Politics of FEPC: A Study in Reform Pressure Movements (Chapel Hill: The University of North Carolina Press, 1948), p. 13.

¹⁶Chap. II, pp. 29-30, supra.

on Fair Employment Practices (FEPC) for implementing a nondiscrimination employment policy in defense industries and in government.¹⁷

Since Roosevelt had issued the Executive Order under his authority as President and Commander in Chief during wartime, some doubt existed that it would be continued after the war.¹⁸ This proved to be the case. With the FEPC in mind,¹⁹ Congress included in the Independent Offices Appropriation Act of 1940²⁰ a Russell Amendment that prohibited the use of funds to pay expenses of any agency (including those established by executive order) that had been in existence for more than one year, unless Congress had specifically appropriated funds for it. Congress twice appropriated money for the FEPC after the

¹⁷Executive Order No. 8802, June 25, 1941, 6 Fed. Reg., 3109, superseded by Executive Order No. 9346, May 27, 1943, 18 Fed. Reg., 7183. For a history of the first and second FEPC see Louis Ruchames, Race, Jobs, & Politics: The Story of FEPC (New York: Columbia University Press, 1953), especially chapters I, III, passim.

¹⁸U.S. House Labor Committee, Prohibiting Discrimination in Employment: Report to Accompany H.R. 3986, House Report 2016, 78th Cong., 2d Sess., 1944, p. 3.

¹⁹Ruchames, op. cit., p. 87; U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 19.

²⁰Sec. 213, 58 Stat. 387 (1944).

passage of the Russell Amendment. The first was for fiscal year 1945, and the second, the following year, was for liquidating the FEPC's affairs.²¹

Extent of Discriminatory
Employment Practices

After the FEPC was terminated, nondiscrimination policies in employment continued to be governed by a few statutory provisions, civil service regulations, some departmental and agency rules, and the nondiscrimination employment policy declared in President Roosevelt's Executive Order No. 9346, which was applicable to war industries and government. Had these policies been adequate, discriminatory employment practices would have diminished. However, the reverse was true. Witnesses before congressional committees in the late forties testified that not only was discrimination widespread, but also that it had

²¹U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 173, n. 13. Subsequently President Truman issued Executive Order No. 9664, December 18, 1945 (10 Fed. Reg. 15301) to give the FEPC additional authority to investigate minority group problems in reconverted industries until June 30, 1946, when funds were cut off. Executive Order No. 9664 is excluded from consideration here because it properly pertains to the wartime FEPC, and its exclusion does not detract from testing the hypothesis of this study.

increased rapidly and continuously since the end of the war.²² The FEPC had observed in its Final Report, issued June 28, 1946, that "the wartime gains of Negro, Mexican American, and Jewish workers are being lost through an unchecked revival of discriminatory practices."²³

The problems created by reconversion added to the usual employment handicaps of the Negro. The wartime gains had been in war industries, temporary war agencies, and the Army Service Forces and Naval shore establishments, all of which rapidly demobilized at war's end.²⁴ The non-discrimination provision still mandatory in government contracts was ineffective without compliance machinery. The Committee on Government Contract Compliance later reported that it had found "the nondiscrimination provision almost forgotten, dead and buried under thousands of words of standard legal and technical language in Government procurement contracts."²⁵

²²U.S. Senate Labor and Public Welfare Committee, Antidiscrimination in Employment: Hearings Before Subcommittee on S. 984, 80th Cong., 1st Sess., 1947, pp. 208, 316, 455.

²³p. 4.

²⁴Committee on FEPC, "Report to the President," August 27, 1945, OF 40, Truman Papers, Harry S. Truman Library.

²⁵Report: Equal Employment Opportunity, January 16, 1953, p. 3.

Various studies show a pattern of discrimination in government employment too. The National Committee on Segregation in the Nation's Capital pronounced in 1946 that it took the average Negro seven times as long as the average white to get a promotion in the Census Bureau.²⁶ In 1948 the Senate's Post Office and Civil Service Committee released a lengthy report pointing to examples of widespread discrimination in civil service appointments. The Committee recommended that a "fulltime tribunal" be established to "seek out instances of racial discrimination instead of awaiting voluntary complaints."²⁷

Although statistics to show the extent of discrimination in employment are not available,²⁸ the conclusions of both House and Senate committees show that discriminatory employment practices were widespread following World War II.

²⁶ "Census Bureau--Study of Promotion of Whites and Negroes" in "Census Bureau (Department of Commerce)" Folder, Records of the President's Committee on Civil Rights, Harry S. Truman Library.

²⁷ Quoted in Congressional Quarterly Almanac, III (1948), 423.

²⁸ Through a gradual process over the past twenty years, all reference to race, color, and religion has been eliminated from federal personnel records. President's Committee on Government Employment Policy, Fourth Report (1961), p. 21.

In 1948, the Senate Committee on Labor and Public Welfare concluded:²⁹

Discrimination in employment is practiced by business, by government, and by labor unions. It is manifested by a refusal to hire, by a denial of in-service training or upgrading opportunity, by wage differentials, by the formation of auxiliary unions lacking the usual benefits of union membership, or by blanket exclusion from such membership. Discrimination is not only widespread; it has been increasing rapidly and continuously since the end of the war.

The House Committee on Education and Labor reached a similar conclusion after hearing witnesses from more than twenty different organizations:³⁰

Discriminatory employment practices based on race, color, religion, national origin, or ancestry are widespread throughout the United States and increasing. Discrimination . . . is practiced by government, by business, and by labor unions.

Need for Legislation

Because of the inadequacy of existing policy to eliminate widespread discrimination in employment,

²⁹Prohibiting Discrimination in Employment: Report and Minority Views To Accompany S. 984, Senate Report 951, 80th Cong., 2d Sess., 1948, pt. 1, p. 2.

³⁰Federal Fair Employment Practice Act: Report to Accompany H.R. 4453, House Report 1165, 81st Cong., 1st Sess., 1949, p. 2.

congressional or executive action was needed. The President has ample constitutional authority as Chief Administrator to prohibit discrimination in the employment policies within the executive branch. Even so, government employment was generally included in the provisions of proposed legislation on fair employment practices. The reasoning of those drafting Administration proposals in 1949, at least, was that the government's employment practices should conform with those recommended by the President for application to private enterprise.³¹ At that time, the Civil Service Commission, feeling that procedures developed under the executive order system were the best way for handling the problem, objected to the application of fair employment practices legislation to government employees.³²

With regard to private employment, the argument for presidential action is based solely upon the implied duty of the President, under his oath of office to uphold a Constitution that affirms equal rights, to see that

³¹Memorandum, Stephen J. Spingarn to Clark Clifford, March 24, 1949, Clifford Files, Harry S. Truman Library.

³²Ibid.

federal money is not used to support discriminatory practices.³³

The fact that Congress refused to pass fair employment practices legislation in all three administrations does raise the question as to whether or not it is proper for the President, under implied constitutional authority, to initiate policies that Congress has failed to approve.

This fundamental point was raised when President Truman by Executive Order No. 10340, April 8, 1952, directed the Secretary of Commerce to seize the nation's steel mills.³⁴ The President's action was declared unconstitutional by the Supreme Court.³⁵ The pivotal point of the opinion was that inasmuch as Congress could have ordered the seizure of the steel mills, the President had no power to do so without prior congressional authorization.

³³Harry S. Truman, "Address in Philadelphia Upon Accepting the Nomination of the Democratic National Convention," July 15, 1948, Public Papers of the Presidents, 1948, p. 408; Dwight D. Eisenhower, "Letter to Governor James F. Byrnes," The White House Years: Waging Peace, 1956-1961 (Garden City, N.Y.: Doubleday and Company, Inc., 1965), p. 582. [Hereinafter cited as Waging Peace]; John F. Kennedy, "Special Message to Congress on Civil Rights," June 19, 1963, Public Papers of the Presidents, 1963, p. 492.

³⁴17 Fed. Reg. 3139.

³⁵Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

Some Congressmen have shared the Court's view in this case. For example, Senator J. William Fulbright told reporters after President Truman established the Government Contract Compliance Committee, that he did not think it was "a proper practice" for the executive branch to attempt to put into effect, through contracts, measures that Congress had refused to approve.³⁶

On the other hand, those who argue that Congress's failure to pass fair employment practices legislation does not prevent the President from entering that field can point to the fact that both President and Congress have acted at different times on the same subjects.³⁷ John W. Davis made this point in a brief he filed as Solicitor General in defense of the President's action in withdrawing certain lands from public entry:³⁸

³⁶The New York Times, December 4, 1951, 26:2.

³⁷See discussion and cases cited in The Constitution of the United States of America: Analysis and Interpretation, Senate Document 39, 88th Cong., 1st Sess., 1963, pp. 542-553.

³⁸Quoted in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 689-691 (1952). None of the executive orders considered in this chapter, in fact, were challenged in the courts.

The function of making laws is peculiar to Congress, and the Executive can not exercise that function to any degree. But this is not to say that all of the subjects concerning which laws might be made are perforce removed from the possibility of Executive influence. The Executive may act upon things and upon men in many relations which have not, though they might have, been actually regulated by Congress. In other words, just as there are fields which are peculiar to Congress and fields which are peculiar to the Executive, so there are fields which are common to both, in the sense that the Executive may move within them until they shall have been occupied by legislative action. These are not the fields of legislative prerogative, but fields within which the lawmaking power may enter and dominate whenever it chooses. . . . Therefore it follows that in ways short of making laws or disobeying them, the Executive may be under a grave constitutional duty to act for the national protection in situations not covered by the acts of Congress, and in which, even, it may not be said that his actions are the direct expression of any particular one of the independent powers which are granted to him specifically by the Constitution. Instances wherein the President has felt and fulfilled such a duty have not been rare in our history, though, being for the public benefit and approved by all, his acts have seldom been challenged in the courts.

Even though the President may act in the field of employment practices, executive action taken under presidential prerogative has limitations that legislation does not. Perhaps the greatest handicap to the implementation of presidential nondiscriminatory employment policies was lack of funds. Inadequate funds, for example, made it impossible for the committees created by executive order to establish regional offices where they were badly

needed³⁹ and deprived the committees of an adequate staff of investigators and attorneys.⁴⁰

The use of public funds for presidential committees has been severely limited by Congress since 1909. The Sundry Civil Act of that year prohibits the use of public money for any "commission, council, board, or other similar body . . . unless the creation of the same shall have been

³⁹Government Contract Committee (President's), Pattern for Progress: Final Report to President Eisenhower [1960], p. 15. The Equal Employment Opportunities Commission, created by the 1964 Civil Rights Act, announced in July, 1965, that regional offices would be opened in New York, Los Angeles, Chicago, Cleveland, Dallas, and Atlanta, and that other branches and subregional offices are planned. U.S. News and World Report, LIX (July 12, 1965), 85.

⁴⁰U.S. House Education and Labor Committee, Special Subcommittee on Labor, Hearings on Equal Employment Opportunity, 87th Cong., 1st Sess., 1961, pt. 1, p. 87; U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 480; Jacob K. Javits, Discrimination-USA (New York: Harcourt, Brace and Company, 1960), p. 282. As of August 2, 1963, the President's Committee on Equal Employment Opportunity had a staff of twenty-three professional and twenty-three clerical employees, whereas the Equal Employment Opportunities Commission initially plans a headquarters staff of one hundred and twenty persons, according to Chairman Franklin D. Roosevelt, Jr. U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 403; U.S. News and World Report, LIX (July 12, 1965), 85.

authorized by law."⁴¹ This is still law, but has always failed to prevent Presidents from setting up committees.⁴² Rather than seek specific congressional appropriations for certain of these unauthorized committees, Presidents have resorted to the "Special Projects" or "Emergency Fund" in the Executive Office Appropriation. This technique was limited by the Russell Amendment, passed by Congress in 1944.⁴³

In order to clarify the purpose of the Russell Amendment with respect to interdepartmental committees, Congress in 1945 stipulated the following:⁴⁴

Appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in authorized activities of common interest to such departments and establishments and composed in whole or in part of representatives thereof who receive no additional compensation by virtue of such membership.

⁴¹35 Stat. 1207 (1909).

⁴²Harlan Cleveland, "Inquiry Into Presidential Inquirers," The New York Times, August 14, 1960, reprinted in Donald Bruce Johnson and Jack C. Walker (eds.), The Dynamics of the American Presidency (New York: John Wiley & Sons, Inc., 1964), p. 293.

⁴³p. 76, supra.

⁴⁴Sec. 214, 59 Stat. 134 (1945).

All of the presidential committees established by the executive orders considered in this chapter were inter-departmental committees, with the exception of the Fair Employment Board, in which case the Civil Service Commission provided the funds and personnel.

Inadequate coverage is another obstacle to a comprehensive presidential program against discrimination in private employment. The President's staff found no way to reach the employment practices of private enterprise, other than through the device of the government contract. Therefore, a fair employment practices executive order cannot directly reach thousands of firms that are not parties to government contracts. Similarly the President has claimed no legal power over labor union practices. Therefore, he cannot reach unions by executive order, since they are not parties to government contracts. It follows then that the President cannot prohibit employment discrimination in a closed shop situation.

Many of the cases that came to the presidential committees were closed for lack of jurisdiction. For example, approximately 36 percent of the complaints received by President Eisenhower's Government Contract Committee provided no occasion for investigation or the institution

of remedial measures because they were not within the purview of the Executive Order.⁴⁵

Nevertheless, the coverage under executive orders is not insignificant, with a total of over two and one-half million civilian employees in the national government,⁴⁶ and millions employed by government contractors. In fiscal 1961, for example, between twenty-five and thirty billion dollars were expended for government contracts,⁴⁷ and these involved about twenty million employees.⁴⁸ President Kennedy told his Committee on Equal Employment Opportunity:⁴⁹

The Federal Government spends billions of dollars a year and therefore this is a most powerful instrument for accomplishing the objectives which we all seek.

⁴⁵Government Contract Committee (President's), Sixth Report To President Eisenhower [1959], p. 6.

⁴⁶U.S. Bureau of the Census, Statistical Abstract of the United States: 1964, p. 405. The figure is for 1963.

⁴⁷U.S. Bureau of the Budget, Summary of Obligations by Objects, Fiscal Years 1960, 1961, and 1962 (Mimeograph), quoted in U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 55.

⁴⁸Theodore C. Sorensen, Kennedy (New York: Harper & Row Publishers, 1965), p. 474.

⁴⁹"Remarks at the First Meeting of the President's Committee on Equal Employment Opportunity," April 11, 1961, Public Papers of the Presidents, 1961, p. 256.

On the other hand, the power of Congress to regulate employment relations affecting interstate or foreign commerce has been repeatedly upheld in recent years.⁵⁰ This gives Congress broader coverage than the President in the field of fair employment practices.

Another limitation is that the committees established by executive order had no power to intervene directly in situations of unfair employment practices, with resort to court enforcement, as does a statutory commission that is enforcing a penal law. Nevertheless, enforcement powers were generally not considered a severe limitation in the later years of the presidential committees, since the members learned that conciliation and persuasion were the tools that best served the efforts of the government to promote equal economic opportunity in American business and industry.⁵¹

⁵⁰See U.S. Senate Labor and Public Welfare Committee, Federal Equality of Opportunity in Employment Act: Report to Accompany S. 3368, Senate Report 2080, 82d Cong., 2d Sess., 1952, p. 10; Ibid., Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 733, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, pp. 485-487.

⁵¹President's Committee on Government Contract Compliance, Report: Equal Employment Opportunity, January 16, 1953, p. 36.

Pressures for Policy Decisions

Because of the greater potential effectiveness of congressional action, most of the pressure for fair employment policies focused on legislation. Most unions--particularly the Congress of Industrial Organizations--began demanding a strong federal antidiscrimination program toward the end of World War II.⁵² By 1949 the National Association for the Advancement of Colored People had declared passage of an FEPC law to be "the No. 1 objective" in the civil-rights program.⁵³ The National Urban League, since its organization in 1910, had given top priority to the question of equal employment opportunities.⁵⁴

In September, 1943, A. Philip Randolph and others formed the National Council for a Permanent FEPC for the sole purpose of securing a fair employment practices

⁵²"The War on Bias," Business Week, No. 1344, June 4, 1955, p. 135.

⁵³U.S. House Education and Labor Committee, Federal Fair Employment Practice Act: Report to Accompany H.R. 4453, House Report 1165, 81st Cong., 1st Sess., 1949, p. 15.

⁵⁴U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 176.

statute with enforcement powers.⁵⁵ Although originally a New York group, the Council grew to include almost seventy cooperating national organizations, including church, labor, civil libertarian, Negro, Jewish, fraternal, and professional groups.⁵⁶

Various civil rights groups cooperated to gain support for FEPC legislation. In 1950 the National Emergency Civil Rights Mobilization, sponsored by fifty-five organizations, held a conference in Washington to support the President's civil rights program, and in particular, to support a fair employment practices bill.⁵⁷ Two years later, delegates of fifty member organizations of the 1952 Leadership Conference on Civil Rights met in Washington to petition Congress to pass FEPC and other civil rights measures.⁵⁸

A. Philip Randolph, who organized the March on Washington in 1941, organized a March on Washington for Jobs and Freedom, August 28, 1963. One of the ten demands

⁵⁵Kesselman, op. cit., p. 29.

⁵⁶Ibid., pp. 30, 34-35.

⁵⁷Letter, Roy Wilkins to David Niles, January 13, 1950, OF 596, Truman Papers, Harry S. Truman Library.

⁵⁸Congressional Quarterly Almanac, VIII (1952), 237.

of the demonstration was a Fair Employment Practices Act barring discrimination by national, state, and municipal governments, and by employers, contractors, employment agencies, and trade unions.⁵⁹

In addition, beginning with the 1944 platform of the Republican Party and the 1948 platform of the Democratic Party, both parties pledged to support fair employment practices legislation.⁶⁰

Various committees advisory to the President recommended legislation to prohibit discrimination in employment. President Roosevelt's Committee on Fair Employment Practice, in its letter of resignation June 28, 1946, recommended that the President continue to urge Congress to pass legislation to guarantee equal job opportunity to all workers without discrimination because of race, color, religious belief, or national origin.⁶¹

⁵⁹Congressional Quarterly Weekly Report, XXI (August 30, 1963), 1495.

⁶⁰The Communist Party, the Progressive Party, the Socialist Party, and the Socialist Workers Party also called for fair employment practices legislation in their party platforms during the two postwar decades. Platforms, as reprinted in Porter and Johnson, op. cit., passim.

⁶¹Final Report, p. v.

In 1947 President Truman's Committee on Civil Rights recommended the enactment of a federal Fair Employment Practices Act,⁶² and in 1960 President Eisenhower's Government Contract Committee favored the enactment of legislation to establish a permanent commission on government contract employment.⁶³

Within the executive branch, the Department of Labor consistently supported legislation to prohibit discrimination in private employment.⁶⁴ Labor Secretary James P. Mitchell even openly supported compulsory fair employment practices legislation during President Eisenhower's first term--contrary to Administration policy. However, when asked at a news conference about Mitchell's endorsement of an equal employment opportunity bill, President Eisenhower answered that it represented Mitchell's opinion and was not an expression of the Administration

⁶²To Secure These Rights, pp. 16, 168.

⁶³Pattern for Progress: Final Report to President Eisenhower, p. 9.

⁶⁴See U.S. Senate Labor and Public Welfare Committee, Subcommittee on Labor and Labor-Management Relations, Discrimination and Full Utilization of Manpower Resources: Hearings on S. 1732 and S. 551, 82d Cong., 2d Sess., 1952, pp. 19-37; Ibid., Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, pp. 97-115, 390-408.

position on the measure.⁶⁵ Secretary of Labor Arthur J. Goldberg also endorsed "in principle" an FEPC bill prior to President Kennedy's support of legislation.⁶⁶

Despite this widespread advocacy of fair employment practices legislation, a coordinated campaign in opposition never developed. This supports the view that opponents felt they could depend upon anticivil rights Congressmen to stop its enactment. Few testified at congressional hearings against proposed FEPC bills. In fact, at some of the hearings no hostile witnesses appeared.⁶⁷ The active opposition to the FEPC movement came mostly from organizations representing businessmen, such as the National Association of State Chambers of Commerce, the United States Wholesale Grocers' Association, and the

⁶⁵ "The President's News Conference," March 3, 1954, Public Papers of the Presidents, 1954, p. 293.

⁶⁶ "The President's News Conference," January 31, 1962, Public Papers of the Presidents, 1962, p. 95.

⁶⁷ No hostile witnesses testified at the hearings before a subcommittee of the Senate Education and Labor Committee on S. 101 and S. 459 in 1945, the hearings before a special subcommittee of the House Education and Labor Committee on H.R. 4453 and companion bills in 1949, or at the hearings on S. 692 conducted by the subcommittee on civil rights of the Senate Labor and Public Welfare Committee in 1954.

Southern States Industrial Council, an organization of Southern manufacturers.⁶⁸

Congressional Action

Even though widespread support for fair employment practices legislation existed, a brief review of congressional action⁶⁹ during three administrations shows the inability of FEPC supporters to get such legislation past procedural barriers. Beginning in 1942⁷⁰ members of both parties introduced a continuous flow of bills and resolutions in one or the other of the Houses for more than two decades.

⁶⁸See Kesselman, op. cit., pp. 170-172; U.S. Senate Labor and Public Welfare Committee, Antidiscrimination in Employment: Hearings Before Subcommittee on S. 984, 80th Cong., 1st Sess., 1947; passim.

⁶⁹"Congressional action," as used in this study, means committee hearings, committee reporting of a bill, floor debate, and voting. The introduction of a bill and referral to committee is not considered "action."

⁷⁰H.R. 7421, Cong. Rec., 77th Cong., 2d Sess., 1942, XXCVIII, 6423. [Permanent Edition unless otherwise noted.]

Truman Administration

During the Truman administration one bill to prohibit discrimination in employment because of race, creed, color, or national origin finally passed the House,⁷¹ but in the Senate no FEPC bill ever came to a vote.

Seventeen bills to prohibit discrimination in employment were introduced in the House in the first session of the Seventy-Ninth Congress. Subsequently, the House Labor Committee favorably reported a bill to establish a permanent FEPC, but the Rules Committee held it until the end of the Seventy-Ninth Congress.⁷² On June 6, 1945, President Truman sent a letter to the Chairman, calling for a rule to permit the bill to reach the floor for debate and a vote.⁷³ The letter gained support for the President among civil rights proponents,⁷⁴ but did not secure a rule for the bill.

⁷¹H.R. 4453, Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 2300-2301.

⁷²U.S. House Labor Committee, Fair Employment Practice Act: Report to Accompany H.R. 2232, House Report 187, 79th Cong., 1st Sess., 1945.

⁷³"Letter to the Chairman, House Rules Committee, Concerning the Committee on Fair Employment Practices," June 5, 1945, Public Papers of the Presidents, 1945, pp. 104-105.

⁷⁴"Analysis of the President's Mail on F.E.P.C.," OF 40, Truman Papers, Harry S. Truman Library.

In the Senate, the Committee on Education and Labor held hearings and favorably reported an FEPC bill.⁷⁵ During the second session, Senator Dennis Chavez on January 17, 1946, finally obtained passage of a motion to bring the bill to the floor.⁷⁶ However, it ran into a complicated filibuster, and after cloture failed⁷⁷ the measure was not revived.

In the Eightieth Congress the House Education and Labor Committee took no action on the fifteen FEPC bills introduced in the House. In the Senate, the Committee on Labor and Public Welfare held hearings in June and July on a bipartisan FEPC bill and favorably reported it in February, 1948.⁷⁸ The Majority Policy Committee scheduled the measure for floor action in April.⁷⁹ However,

⁷⁵U.S. Senate Education and Labor Committee, Prohibiting Discrimination in Employment Because of Race, Creed, Color, National Origin, or Ancestry: Report to Accompany S. 101. Senate Report 290, 79th Cong., 1st Sess., 1945..

⁷⁶Cong. Rec., 79th Cong., 2d Sess., 1946, XCII, 81.

⁷⁷Ibid., p. 1219.

⁷⁸U.S. Senate Labor and Public Welfare Committee, Prohibiting Discrimination in Employment Because of Race, Religion, Color, National Origin, or Ancestry: Report and Minority Views to Accompany S. 984, Senate Report 951, 2 parts, 80th Cong., 2d Sess., 1948.

⁷⁹Congressional Quarterly Almanac, III (1948), 230.

the Republican leaders were afraid that any attempt to bring the FEPC bill to the floor would result in a filibuster by Southern Senators opposed to the measure and never called the bill up for consideration.⁸⁰

The closest that supporters of FEPC legislation came to success during the Truman administration was during the Eighty-First Congress. In April, 1949, Representative Adam C. Powell and Senator J. Howard McGrath introduced Administration-sponsored FEPC bills in both the House and Senate.⁸¹ The House Education and Labor Committee reported its bill with amendment, but the Rules Committee declined to clear the measure.⁸² Early in 1950 the Chairman of the Education and Labor Committee took the bill away from the Rules Committee under the "21-day rule," and sent it to the House floor.⁸³ After lengthy debate, a voluntary FEPC bill was substituted for the original compulsory plan, and

⁸⁰Ibid., pp. 231-232.

⁸¹H.R. 4453 and S. 1728, Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 5382, 5211.

⁸²U.S. House Education and Labor Committee, Federal Fair Employment Practice Act: Report to Accompany H.R. 4453, House Report 1165, 81st Cong., 1st Sess., 1949.

⁸³Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 2162.

the amended bill then passed the House 240-177, the only time a fair employment practices bill passed either House.⁸⁴

The Senate Committee on Labor and Public Welfare reported the companion bill without recommendation.⁸⁵ Administration forces tried to get action on the Senate bill, but failed. A filibuster blocked decision on a motion to take up the measure, and after cloture attempts failed twice, proponents allowed the bill to die.⁸⁶

After the 1950 defeat, President Truman made no further major effort to secure civil rights legislation. No action occurred in 1951, and in 1952 the only congressional action was Senate Committee approval of an FEPC bill.⁸⁷

⁸⁴Ibid., pp. 2162-2301, passim. Fair employment practices measures have been of two general types: those with enforcement or penalty provisions (compulsory), and those with persuasive or educational provisions only (voluntary).

⁸⁵National Act Against Discrimination in Employment: Report and Minority Views to Accompany S. 1728, Senate Report 1539, 2 parts, 81st Cong., 2d Sess., 1950,

⁸⁶Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 6497-16595, passim.

⁸⁷U.S. Senate Labor and Public Welfare Committee, Federal Equality of Opportunity in Employment Act: Report to Accompany S. 3368, Senate Report 2080, 82d Cong., 2d Sess., 1952.

Eisenhower Administration

The incoming Eisenhower administration showed little interest in fair employment practices legislation. Dozens of bills, introduced in every session, died in committee. The House took no action during the Eisenhower administration, but the Senate Labor and Public Welfare Committee held hearings and favorably reported a bipartisan bill in 1954.⁸⁸ However, the measure was never brought to the floor.

(During his second term, President Eisenhower included a provision for a statutory Commission on Equal Job Opportunity under Government Contracts in the Administration's omnibus civil rights bill,⁸⁹ but the House Judiciary Committee deleted it from the bill. Committee Chairman Emanuel Celler said that an "unholy alliance" of Southern Democrats and Republicans was responsible

⁸⁸Federal Equality of Opportunity in Employment Act: Report Together With Minority and Individual Views to Accompany S. 692. Senate Report 1267, 83d Cong., 2d Sess., 1954.

⁸⁹"Special Message to the Congress on Civil Rights," February 5, 1959, Public Papers of the Presidents, 1959, p. 167.

for its removal.⁹⁰ The Chair ruled out of order attempts to restore the provision on the House floor.⁹¹

When the Senate Judiciary Committee conducted hearings on the House-passed bill, Senator Kenneth B. Keating offered the fair employment practices provision as a Committee amendment, but this move failed.⁹² In one more attempt, Senator Jacob Javits offered the deleted provision on the Senate floor. Minority Leader Everett Dirksen, Senate sponsor of the Administration bill, moved to table the amendment, and the tabling motion carried 48-38.⁹³ Dirksen explained that he did not want the provision to "jeopardize passage" of a civil rights bill and he had requested the President not to include it in the original Administration measure.⁹⁴ The bill was passed and the President signed the Civil Rights Act into law

⁹⁰Congressional Quarterly Almanac, XVI (1960), 197.

⁹¹Cong. Rec., 86th Cong., 2d Sess., 1960, CVI, 5477, 5479.

⁹²Congressional Quarterly Almanac, XVI (1960), 197.

⁹³Cong. Rec., 86th Cong., 2d Sess., 1960, CVI, 7166.

⁹⁴Ibid., 7165.

May 6, 1960. When Congress reconvened August 8, following the presidential nominating conventions, Dirksen and ten Republican cosponsors introduced a bill in which they had incorporated the proposal for a Commission on Equal Job Opportunity.⁹⁵ The bill was tabled by a 54-28 roll-call vote, and the Eighty-Sixth Congress took no further civil rights action.

Kennedy Administration

The incoming Kennedy administration refused to support fair employment practices legislation until the Eighty-Eighth Congress. In the interim, the House Committee on Education and Labor conducted hearings in 1961 on a bill to bar federal aid to apprenticeship programs practicing discrimination.⁹⁶ The following year the Committee held hearings on broader proposals and reported a bill to establish an Equal Employment Opportunity

⁹⁵S. 3823, Cong. Rec., 86th Cong., 2d Sess., 1960, CVI, 16008.

⁹⁶Special Subcommittee on Labor, Equal Opportunity in Apprenticeship Programs: Hearings on H.R. 8219, 87th Cong., 1st Sess., 1961.

Commission, but the House Rules Committee did not clear the measure for floor action.⁹⁷

Early in the Eighty-Eighth Congress members of both political parties introduced a number of broad civil rights bills, including an Administration-sponsored omnibus bill. A subcommittee of the House Judiciary Committee conducted hearings on one hundred and seventy-two bills relating to civil rights, including fair employment practices, and reported an omnibus civil rights bill that included a title creating a Federal Equal Opportunity Commission.⁹⁸ Minority party members of the subcommittee charged that previously prepared amendments were forced through on the basis of majority membership of the subcommittee.⁹⁹ The bipartisan harmony on fair employment practices legislation disappeared, they charged, the day the tax reduction bill passed.¹⁰⁰

⁹⁷U.S. House Education and Labor Committee, Equal Employment Opportunity Act of 1962: Report to Accompany H.R. 10144, House Report 1370, 87th Cong., 2d Sess., 1962.

⁹⁸U.S. House Judiciary Committee, Civil Rights Act of 1963: Report To Accompany H.R. 7152, House Report 914, 2 parts, 88th Cong., 1st Sess., 1963, p. 16.

⁹⁹Ibid., pt. 2, pp. 45-46, 61-64, 95, 115.

¹⁰⁰Ibid., pp. 45, 115.

After several days of negotiations among the Administration, Northern Democrats and Republicans on the Judiciary Committee, and the House leadership of both parties¹⁰¹ the full Judiciary Committee reported a bipartisan civil rights bill that contained less sweeping provisions than those reported by the subcommittee, but--even so--was broader than the original Administration bill.¹⁰² The major concern over the future of the new bipartisan bill was the reported resentment of many conservative Republicans over the inclusion of the Fair Employment Opportunities Commission provision.¹⁰³ However, the Eighty-Eighth Congress finally did pass the bill, with an Equal Employment Opportunity Title, and President Johnson signed the Civil Rights Act of 1964 on July 2.¹⁰⁴

Pages of congressional testimony, debate, and dialogue accumulated during the two decades in which

¹⁰¹Congressional Quarterly Weekly Report, XXI (November 1, 1963), 1875.

¹⁰²U.S. House Judiciary Committee, Civil Rights Act of 1963: Report to Accompany H.R. 7152, House Report 914, 88th Cong., 1st Sess., 1963, pt. 2, p. 115.

¹⁰³Congressional Quarterly Weekly Report, XXI (November 1, 1963), 1875.

¹⁰⁴78 Stat. 241 (1964).

supporters of fair employment practices legislation attempted to get a bill through Congress. During this time the House Rules Committee never approved an FEPC bill for floor debate and a vote, and no FEPC bill ever came to an actual vote in the Senate. Finally, a fair employment practices provision attached to an omnibus civil rights bill passed. The Civil Rights Act of 1964, in effect, gave congressional endorsement to the policies previously established by presidential executive orders, the subject of the next section.

Presidential Action

From the beginning of his administration, President Truman sought fair employment practices legislation and used the executive order when he could not get congressional action. Both Presidents Eisenhower and Kennedy relied upon the executive order as an alternative to attempting to get legislation from Congress and only later in their terms supported fair employment practices measures. Several factors prompted these strategies.

President Truman

The issue of fair employment practices legislation was brought to presidential attention as soon as

Truman assumed the office in April, 1945. At that time the FEPC established by executive order was the subject of a congressional appropriations battle, and the bill to establish a statutory FEPC was held up in the House Rules Committee.

On June 6, 1945, President Truman sent a widely-publicized letter to the Rules Committee Chairman and asked him to permit the legislation to come to a vote on the House floor.¹⁰⁵ On June 19, he telegraphed support to a "Save the FEPC" rally in New York,¹⁰⁶ and on June 25, he extended greetings to a "Negro Freedom Rally" gathered in New York.¹⁰⁷

On September 6, 1945, President Truman sent to Congress a twenty-one point legislative program for reconversion to a peacetime economy, and he included a request for a permanent FEPC.¹⁰⁸ The National Urban League voiced

¹⁰⁵p. 96, supra.

¹⁰⁶"Night Letter to Dr. Henry A. Atkinson, Council Against Intolerance in America," June 18, 1945, OF 40, Truman Papers, Harry S. Truman Library.

¹⁰⁷Kesselman, op. cit., p. 213.

¹⁰⁸"Special Message to the Congress Presenting a 21-Point Program for the Reconversion Period," September 6, 1945, Public Papers of the Presidents, 1945, pp. 263-309.

"complete satisfaction with the President's clear-cut statements on the problem of full employment and fair employment practices."¹⁰⁹

In December, 1945, President Truman wrote to the heads of all executive agencies and asked them to review their personnel policies and procedures and to assure him that they were in accord with national policy expressed in civil service rules and existing law.¹¹⁰ So at least initially, President Truman intended to seek compliance without special administrative machinery and to use less formal directives than the executive order, while at the same time pressing for legislation.¹¹¹

On December 5, 1946, President Truman created his advisory Committee on Civil Rights.¹¹² The Committee's

¹⁰⁹Letter, Lester Granger to Samuel Rosenman, September 7, 1945, OF 93, Truman Papers, Harry S. Truman Library.

¹¹⁰"Letter to Heads of All Government Departments, Agencies and Independent Establishments," December 18, 1945, OF 40, Truman Papers, Harry S. Truman Library.

¹¹¹During 1946 and early 1947 the President repeated his recommendations for fair employment practices legislation in a radio address, State of the Union message, and Economic Report to Congress. All in Public Papers of the Presidents, 1946, pp. 1-8, 36-87; Ibid., 1947, pp. 13-39.

¹¹²Chap. II, p. 32, supra.

report, submitted the following year, outlined recommendations for legislation, including a Fair Employment Practices Act and Bureau of the Budget surveillance of agency compliance with nondiscrimination policy.¹¹³ In January Stephen J. Spingarn, Assistant General Counsel in the Treasury Department and members of the White House staff prepared draft legislation to carry out the civil rights recommendations that the President planned to send to Congress by special message.¹¹⁴ The drafting committee incorporated the provisions of the bipartisan FEPC bill pending in Congress¹¹⁵ into the President's proposals, but excluded Bureau of the Budget surveillance of agency compliance with nondiscrimination policy.¹¹⁶ The staff noted that the latter could be accomplished without legislation, and furthermore, the Bureau of the Budget was opposed to doing it either with or without legislation.¹¹⁷

¹¹³To Secure These Rights, pp. 166, 170.

¹¹⁴Memorandum for the File, January 21, 1948, Spingarn Papers, Harry S. Truman Library.

¹¹⁵S. 984, 80th Cong., 2d Sess., 1948.

¹¹⁶"Suggested Outline of Omnibus Civil Rights Bill of 1948," Spingarn Papers, Harry S. Truman Library.

¹¹⁷Ibid. The President's Committee on Civil Rights also suggested that Bureau of the Budget surveillance of agency compliance with nondiscrimination policy might be accomplished by executive order. To Secure These Rights, p. 170.

Subsequently, in his Special Message to the Congress on Civil Rights on February 2, 1948, President Truman recommended that Congress enact legislation to create a "Fair Employment Practice Commission with authority to prevent discrimination by employers and labor unions, trade and professional associations, and government agencies and employment bureaus."¹¹⁸

With regard to executive action, the Civil Rights Committee recommended that the President issue a mandate against discrimination in government and create adequate machinery to enforce this mandate. The committee suggested:¹¹⁹

It may well be desirable to establish a government fair employment practice commission, either as a part of the Civil Service Commission, or on an independent basis with authority to implement and enforce the Presidential mandate.

In his February 2, Civil Rights message President Truman said:¹²⁰

¹¹⁸As reprinted in Public Papers of the Presidents, 1948, p. 124.

¹¹⁹To Secure These Rights, p. 168.

¹²⁰As reprinted in Public Papers of the Presidents, 1948, p. 125.

Under the authority of the existing law, the Executive branch is taking every possible action to improve the enforcement of the civil rights statutes and to eliminate discrimination in Federal employment, in providing Federal services and facilities, and in the armed forces. . . . It is the settled policy of the United States Government that there shall be no discrimination in Federal employment or in providing Federal services and facilities I shall shortly issue an Executive Order containing a comprehensive restatement of the federal non-discrimination policy, together with appropriate measures to ensure compliance.

The Civil Service Commission prepared a preliminary draft of the proposed executive order, but Presidential Assistant Philleo Nash felt that the order was too weak and would incur as much wrath as a stronger order and yet would not gain any favor.¹²¹ In early February he had talked with Walter White and others from the NAACP about the organization's views on the proposed executive order.¹²² Nash urged the creation of a special unit in the Civil Service Commission to review decisions, make rules, and coordinate policies and procedures.¹²³ The final draft, prepared by the

¹²¹Memorandum, Dawson to Clifford, March 8, 1948, OF 596, Truman Papers, Harry S. Truman Library.

¹²²Memorandum, Nash to Murphy, February 10, 1948, Nash Files, Harry S. Truman Library.

¹²³Ibid.

Justice Department, provided for a Fair Employment Board in the Civil Service Commission.¹²⁴

President Truman had committed his administration to civil rights action, and to meet the challenge of the 1948 Democratic platform he issued Executive Order No. 9980, together with Executive Order No. 9981 on July 26, 1948. The Executive Orders were to provide an asset for the Democrats in the 1948 campaign.¹²⁵ In a speech in Harlem October 29, 1948, President Truman made his political point:¹²⁶

After the Civil Rights Committee submitted its report, I asked Congress to do ten of the things recommended by the Committee. You know what they did about that. So I went ahead and did what the President can do, unaided by the Congress. I issued two Executive orders.

Executive Order No. 9980, the text of which appears in Appendix II, caused little comment. According

¹²⁴Memorandum, Elmer B. Staats to Clark Clifford, July 26, 1948, Bureau of the Budget, FL-13/48.1, Record Group No. 51, The National Archives.

¹²⁵For a more extensive elaboration of this point, see Chap. II, pp. 44-49, supra.

¹²⁶"Address in Harlem, New York, Upon Receiving the Franklin Roosevelt Award," October 29, 1948, Public Papers of the Presidents, 1948, p. 924.

to Mary S. Spargo, reporting to the Washington Post, "most Southerners agreed with a spokesman for the Civil Service Commission who said that antisegregation rules had been in force within the Civil Service for years and the new orders would have little effect."¹²⁷

Although the Executive Order reaffirmed existing policy, it also established an implementing agency to add some sanctions to previous policy. Therefore, the President intended to pursue a more vigorous course to eliminate discrimination in government employment.

After the issuance of Executive Order No. 9980, the President continued to seek a method for meeting the problem in private employment. However, because of the Russell Amendment, he moved cautiously. The President again supported proposals for fair employment practices legislation in his State of the Union and Budget messages in 1949.¹²⁸ He also instructed the preparation of an

¹²⁷July 27, 1948, 1:7.

¹²⁸As reprinted in Public Papers of the Presidents, 1949, pp. 6, 90. At Stephen J. Spingarn's suggestion, the President received a delegation from the National Emergency Civil Rights Mobilization Committee January 17, 1950. Spingarn advised the President: "Since the likelihood of enactment of any consequential civil rights legislation in 1950 seems remote, it would appear to be particularly desirable that the President take advantage of

executive order as similar to the wartime FEPC as possible to be issued "as soon as possible."¹²⁹

In 1950 a proposed executive order creating an FEPC with enforcement powers was sent to the Bureau of the Budget by the Department of Labor and was the subject of discussion between government agencies and minority group organizations for several months.¹³⁰ The Labor Department believed that the Russell Amendment prevented the creation of an FEPC similar to Roosevelt's.¹³¹ Attorneys for the NAACP at a meeting with the Department of Labor spokesmen argued that the Russell Amendment did not prevent the creation of an FEPC because Congress appropriated directly to the Committee during the last two years of its existence.¹³²

appropriate opportunities during 1950 to demonstrate (as we know to be the case) that he means what he has said about civil rights legislation." Memorandum, Stephen J. Spingarn to Clark Clifford, December 19, 1949, OF 596, Truman Papers, Harry S. Truman Library.

¹²⁹Memorandum, Charles S. Murphy to the President December 1, 1951, OF 526-B, Truman Papers, Harry S. Truman Library.

¹³⁰Letter, Walter White to Charles E. Wilson, January 4, 1951, Nash Files, Harry S. Truman Library.

¹³¹Memorandum, George L. P. Weaver to W. Stuart Symington, December 1, 1950, Nash Files, Harry S. Truman Library.

¹³²Ibid.

When the question of a forthcoming executive order came up at a press conference, the President told reporters that he would act at the proper time within the framework of the statutes and his authority.¹³³

Following the outbreak of the Korean crisis and during the period from February until November, 1951, President Truman issued, under authority of the First War Powers Act, 1941, as amended by the act of January 12, 1951,¹³⁴ six executive orders directing certain government agencies to include nondiscrimination clauses in their procurement contracts.¹³⁵ These efforts to revitalize the nondiscrimination clause in government contracts finally culminated in Executive Order No. 10308, December 3, 1951, also issued under statutory authority.¹³⁶ The Order created an

¹³³Unsigned Memorandum, OF 93, Truman Papers, Harry S. Truman Library.

¹³⁴55 Stat. 838 (1941), 64 Stat. 1257 (1951).

¹³⁵Executive Order No. 10210, February 2, 1951, 16 Fed. Reg. 1049; Executive Order No. 10227, March 24, 1951, 16 Fed. Reg. 2675; Executive Order No. 10231, April 5, 1951, 16 Fed. Reg. 3025; Executive Order No. 10243, May 11, 1951, 16 Fed. Reg. 4419; Executive Order No. 10281, August 28, 1951, 16 Fed. Reg. 8789; and Executive Order No. 10298, October 31, 1951, 16 Fed. Reg. 11135.

¹³⁶16 Fed. Reg. 12303. President Truman issued the Order under the authority of the Defense Production Act of 1950, as amended. 64 Stat. 798 (1950), 65 Stat. 131 (1951).

interagency Government Contract Compliance Committee, that was charged primarily with studying and assessing the effectiveness of the existing program.

The Attorney General advised the President that the letters of appointment should refer to the section of the act under which the appointments were made and recite that the President deemed such appointments necessary and appropriate in order to carry out the provisions of the Defense Production Act of 1950, as amended.¹³⁷ To accompany the text of the Executive Order, President Truman on December 3 released a statement in which he carefully related the Order to his war powers.¹³⁸

Although executive orders issued under statutory authority are excluded from this study, Executive Order No. 10308 is important to note because of the President's concern over authority. Lack of controversy regarding this Order in all probability encouraged President Eisenhower to take further steps to implement nondiscriminatory employment policies through the instrument of the government contract.

¹³⁷Letter, Attorney General J. Howard McGrath to the President, December 1, 1951, OF 526-B, Truman Papers, Harry S. Truman Library.

¹³⁸The New York Times, December 4, 1951, 26:3.

President Eisenhower

President Eisenhower committed his administration to the cause of civil rights in his first State of the Union message in 1953. However he did not propose legislation, and he only indirectly endorsed fair employment practices measures by stressing his intention to redeem the pledges of the party platform.¹³⁹ He wrote in his memoirs:¹⁴⁰

. . . I did not agree with those who believed that legislation alone could institute instant morality, who believed that coercion could cure all civil rights problems, and who were so eager to denounce discrimination that they habitually tacked anti-segregation amendments onto critically needed legislation, such as for school construction, and thus insured its death.

Eisenhower contended that the two previous administrations had exerted the bulk of their efforts on securing civil rights legislation that habitually met defeat from opposition led by members of the Democratic party.¹⁴¹ He decided on the following approach:¹⁴²

¹³⁹Dwight D. Eisenhower, The White House Years: Mandate for Change (Garden City, N.Y.: Doubleday & Company, Inc., 1963), pp. 194-195. Hereinafter cited as Mandate for Change.

¹⁴⁰Waging Peace, p. 149.

¹⁴¹Mandate for Change, p. 234.

¹⁴²Ibid.

It seemed to me that much could be done by Executive power alone. Integration in the District of Columbia, which should be the showpiece of our nation, was not a fact on the date of my inauguration. Elsewhere--in installations of the armed forces and in veterans hospitals, for example, particularly in the south and in the border states--segregation was still practiced. The very least the Executive could do would be to see first that the federal house itself was in order and that segregation in all installations where federal money was spent should become a thing of the past.

A persistent theme in all of President Eisenhower's statements on civil rights is a preference for executive, rather than legislative, action and a preference for state and local, rather than national, action. He repeatedly emphasized that "there are certain things that are not best handled by punitive or compulsory Federal law"¹⁴³ and that he would take action only where "Federal authority clearly extends."¹⁴⁴

After the Republican victory in November, members of President Truman's Committee on Government Contract Compliance began resigning. The chairman resigned January 16, 1953, and after that the Committee had only a

¹⁴³ "The President's News Conference," March 3, 1954, Public Papers of the Presidents, 1954, p. 293.

¹⁴⁴ "Remarks at Conference of the National Association for the Advancement of Colored People," March 10, 1954, Public Papers of the Presidents, 1954, p. 311.

nominal existence.¹⁴⁵ On at least three occasions newsmen called this fact to the attention of the President.¹⁴⁶ Eisenhower responded to the need for policy by Executive Order No. 10479, issued on August 13, 1953. The Order, contained in Appendix III, not only reaffirmed the government's nondiscriminatory employment policies, but also strengthened the provisions for their implementation.

President Eisenhower elevated the new Government Contract Committee to White House level and appointed Vice President Richard Nixon chairman in order to give it the maximum prestige and authority. The head of each contracting agency retained primary responsibility for obtaining compliance, but the Committee was instructed to assist the contracting agencies to develop policies and programs for discharging their responsibilities, to develop a system for processing complaints, to organize a program of cooperation with public and private agencies working in the field, and to encourage educational efforts concerning the necessity and desirability of the national policy.

¹⁴⁵The New York Times, August 14, 1953, 6:5.

¹⁴⁶The President's news conferences of April 2, 1953, April 23, 1953, and May 28, 1953, in Public Papers of the President, 1953, pp. 152, 205, 339.

The President met with members of the Committee on August 19, 1953, and emphasized that he wanted concrete accomplishments in connection with the problem of discrimination in employment under government contracts and that he was not interested "in making a show from a publicity standpoint."¹⁴⁷

One of the first actions of the Government Contract Committee was to revise and strengthen the nondiscrimination clause mandatory in government contracts, and President Eisenhower issued the new clause in Executive Order No. 10557. The clause, as quoted in Appendix IV, required the posting of a notice by the contractor acknowledging his agreement to provide employment without discrimination because of race, religion, color, or national origin. This requirement meant that for the first time every contracting officer had to assume active responsibility for the program, and every government contractor was obliged to provide a public notice of his agreement to comply with the national policy.¹⁴⁸ The clause also stipulated that the contractual obligation to bar

¹⁴⁷The New York Times, August 20, 1953, 1:2.

¹⁴⁸Government Contract Committee (President's), Second Annual Report (1955), p. 2.

discrimination applied not only to initial hiring, but also in upgrading, demotion, transfer, recruitment, and other aspects of employment.

During his first term of office, President Eisenhower also established his own committee to ensure nondiscrimination in government service. Between 1952 and 1955 the Fair Employment Board had continued to supervise the government's fair employment policy. However, President Eisenhower did not give the Board the active presidential attention¹⁴⁹ that President Truman had.¹⁵⁰ On January 18, 1955, President Eisenhower issued Executive Order No. 10590,

¹⁴⁹When the Bureau of Engraving and Printing resisted a Fair Employment Board recommendation, President Eisenhower, when questioned about it, stated that he couldn't be expected to know too much about it. See "The President's News Conference," April 29, 1954, Public Papers of the Presidents, 1954, p. 435. Eisenhower, on the other hand, personally encouraged the efforts of his own Committee on Government Employment Policy after it was established. For example, in 1960 the President invited the chairman to appear before a full Cabinet meeting to outline the Committee's methods of operation, report its accomplishments, and make recommendations for action programs. President's Committee on Government Employment Policy, Fourth Report (1961), p. 34.

¹⁵⁰For example, when the Veterans Administration resisted a Fair Employment Board recommendation, the VA received White House prodding. Memorandum, Nash to Dawson, October 5, 1951, Nash Files, Harry S. Truman Library.

establishing the Committee on Government Employment Policy. As with the Government Contract Committee, Eisenhower enhanced the status of the implementing machinery by establishing the new committee at the White House level. He authorized it to "advise the President, . . . recommend methods, . . . review cases, . . . render advisory opinions, . . . [and] make inquiries and investigations in the name of the President and responsible only to him." Although the Committee was advisory to the heads of the executive agencies, they retained direct responsibility for the enforcement of the nondiscrimination policy.

The issuance of Executive Order No. 10590, which is reprinted in Appendix V, commanded little public attention. No presidential statement accompanied the Order when the White House released it to the press. The President made no mention of the Order the following day at his news conference. This lack of attention to a news-creating device lends credence to the argument that this Order was not timed for any political advantage to the Republicans, but that Eisenhower was sincere in his emphasis upon quietly taking executive action in the field of civil rights in order not to create civil rights controversy.¹⁵¹

¹⁵¹See "Television Broadcast: 'The People Ask the President,'" October 12, 1956, Public Papers of the Presidents, 1956, p. 241.

President Eisenhower did not seek civil rights legislation during his first term. This was due to at least three reasons. First, he considered civil rights to be a social problem not amenable to legislative solutions.¹⁵² Second, he discounted the likelihood that Congress would pass civil rights legislation.¹⁵³ Vice President Nixon had advised that no matter how big and important the issue, the Democratic-controlled Congress would not let a civil rights bill out of committee.¹⁵⁴ And, third, he feared that pressure for civil rights legislation might jeopardize the Administration's other legislative programs.¹⁵⁵ In March, 1957, Senator William Knowland informed the President that the Democrats had let it be known that if the Republicans insisted on pushing the civil rights proposals, they might have considerable trouble moving other legislation they wanted.¹⁵⁶

¹⁵²"Remarks at the National Conference on Civil Rights," June 9, 1959, Public Papers of the Presidents, 1959, pp. 127-128.

¹⁵³Eisenhower, Mandate for Change, p. 234.

¹⁵⁴Sherman Adams, Firsthand Report: The Story of the Eisenhower Administration (New York: Harper & Brothers, 1961), p. 336.

¹⁵⁵See Eisenhower, Mandate for Change, p. 192.

¹⁵⁶Adams, op. cit., p. 339; Eisenhower, Waging Peace, p. 154.

Nevertheless, persisting allegations that Negro citizens were being deprived of the right to vote and subjected to economic pressures influenced Eisenhower to advocate congressional action on civil rights for the first time in his State of the Union message in 1956.¹⁵⁷ The President recommended that a bipartisan commission created by Congress thoroughly examine the voting charges, and he announced that other proposals would be added to the civil rights program during 1956.¹⁵⁸

Attorney General Herbert Brownell prepared draft legislation,¹⁵⁹ and the entire Cabinet participated in discussions on the proposed civil rights program.¹⁶⁰ While Brownell pressed for the Justice Department proposals, some in the Cabinet and on the White House staff advised the President that he was asking for trouble from the

¹⁵⁷Eisenhower, Waging Peace, p. 153.

¹⁵⁸"Annual Message to the Congress on the State of the Union," January 5, 1956, Public Papers of the Presidents, 1956, p. 25.

¹⁵⁹See J. W. Anderson, Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956-1957 (University, Ala.: University of Alabama Press, 1964) for the thesis that Brownell was largely responsible for initiating and pressing for legislation in 1956.

¹⁶⁰Eisenhower, Waging Peace, p. 153.

Southern Democrats in Congress.¹⁶¹ Due to the rift in the Cabinet over civil rights, it was not until April 9, 1956, that the President's recommendations went to the Congress, and they did not include provisions regarding fair employment practices.¹⁶²

In 1959 a provision for a Commission on Equal Employment Opportunity under Government Contracts was included in the Administration's omnibus civil rights bill, despite the advice of Senate Minority Leader Everett Dirksen.¹⁶³ Administration forces in Congress sacrificed this provision,¹⁶⁴ even though it was limited in jurisdiction to that of the existing program, in order to secure passage of the Civil Rights Act of 1960.¹⁶⁵

President Kennedy

President Eisenhower's successor, John F. Kennedy, also believed that "we are confronted primarily with a

¹⁶¹Adams, op. cit., p. 335.

¹⁶²Ibid., pp. 336-338.

¹⁶³Cong. Rec., 86th Cong., 2d Sess., 1960, CVI, 7165.

¹⁶⁴Ibid., p. 7166.

¹⁶⁵74 Stat. 89 (1960).

moral issue."¹⁶⁶ However, he had more confidence in legislation as an aid to alleviating the problem than did Eisenhower.¹⁶⁷ After the nominating convention, Senator Kennedy formed a team to work on civil rights problems,¹⁶⁸ and during the campaign he committed himself to legislative and executive leadership in that area.¹⁶⁹ In September, 1960, the candidate asked Senator Joseph S. Clark and Representative Emanuel Celler to implement with draft legislation the party's civil rights pledges, one of which was a statutory FEPC.¹⁷⁰

¹⁶⁶"Radio and Television Report to the American People on Civil Rights," June 11, 1963, Public Papers of the Presidents, 1963, p. 469.

¹⁶⁷"Address in Honolulu Before the United States Conference of Mayors," June 9, 1963, Public Papers of the Presidents, 1963, p. 454.

¹⁶⁸Anthony Lewis and The New York Times, Portrait of a Decade: The Second American Revolution (New York: Random House, 1964), p. 115.

¹⁶⁹See "The President's News Conference," February 1, 1961, Public Papers of the Presidents, 1961, p. 33; Charles Lam Markham and Mark Sherwin, John F. Kennedy: A Sense of Purpose (New York: St. Martin's Press, 1961), p. 322.

¹⁷⁰U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 96.

Following his inauguration, however, President Kennedy presented his legislative program in a State of the Union message, a Budget message, and various special messages. Civil rights recommendations were conspicuously omitted. After Senator Clark and Representative Celler introduced their bills in May, White House Press Secretary Pierre Salinger announced that they were "not Administration-backed bills."¹⁷¹

President Kennedy's shift was in all probability due to his need for the votes of Southern Democrats to put over higher priority administration measures. When pressed for an explanation of his position on civil rights at a news conference March 8, 1961, Kennedy responded:¹⁷²

When I believe that we can usefully move ahead in the field of legislation, I will recommend it to the Congress. I do believe that there are a good deal of things we can do now in administering laws previously passed by the Congress, particularly in the area of voting, and also by using the powers which the Constitution gives to the President through Executive orders. When I feel that there is a necessity for a congressional action, with a chance of getting that congressional action, then I will recommend it to the Congress.

¹⁷¹Congressional Quarterly Almanac, XVII (1961), 392; Markham and Sherwin, op. cit., pp. 329-330.

¹⁷²Public Papers of the Presidents, 1961, pp. 156-157.

After a White House meeting in May, 1961, Senate Majority Leader Mike Mansfield said: "We want to get the program outlined by the President through, and after that we will consider civil rights if necessary."¹⁷³

Instead of pressing for legislation, President Kennedy issued Executive Order No. 10925 on March 6, 1961, in his first major civil rights move. The Order designated the Vice President of the United States as Chairman of the new Committee on Equal Employment Opportunity, which replaced both the Government Contract Committee and the Committee on Government Employment Policy. The Vice Chairman was the Secretary of Labor, who had specific responsibility for supervising the implementation of equal employment policies. This was an important addition, because the Labor Department already had regional offices all over the country.

Probably the most important difference from previous orders was the requirement of positive action to further equal employment opportunities, rather than merely the prohibition of discriminatory practices. The Order, which is contained in Appendix VI, stated that "it is the

¹⁷³Congressional Quarterly Almanac, XVII (1961), 392.

policy of the Executive Branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government." Furthermore, the Order included a new, much more comprehensive nondiscrimination clause that required a government contractor to take "affirmative action" to make certain that applicants were employed and employees treated during employment without discrimination.

Executive Order No. 10925 went beyond all previous orders in the requirements it made of government contractors and the powers it gave to the Committee. The antidiscrimination clause to be included in government contracts was for the first time to be at least partly self-enforcing through regularly required reports on compliance. The Committee itself was empowered to investigate the employment policies of any government contractor or subcontractor or could initiate such an inquiry by the appropriate contracting agency or through the Secretary of Labor. An entire section of the Order set forth sanctions and penalties to ensure policy-compliance. Executive Order No. 10925, its companion Order, No. 11114, and the fair housing order considered in the next chapter, are the only three executive orders out of 1,602 issued by the three Presidents,

to include a list of sanctions.¹⁷⁴ This exercise of power by the President has not been tested in the courts.

Two and one-half years after President Kennedy issued Executive Order No. 10925, a statutory committee became a part of the Administration's program. On February 28, 1963, the President had sent to Congress his first Special Message on Civil Rights, in which he had called for a program of new laws to protect the rights of minorities. However, in the area of employment rights, he had made no specific requests of Congress.

In May, 1963, President Kennedy, at a press conference, confirmed reports that the Administration was considering new civil rights legislation as a result of the events in the South during the Spring months.¹⁷⁵ On the night of June 11, 1963, after the confrontation with Governor George Wallace over the admission of Negroes to

¹⁷⁴The decision to use the economic power of the government to effect social policy declared by the executive branch was a major one. The sanctions were an important part of the new policy and were therefore incorporated within the three executive orders, rather than remaining a matter for agency determination. The inclusion of sanctions and penalties makes the form of the executive order even more like that of the statute.

¹⁷⁵"The President's News Conference," May 22, 1963, Public Papers of the Presidents, 1963, p. 423.

the University of Alabama, President Kennedy addressed the nation and stated that "the events in Birmingham and elsewhere have so increased the cries for equality that no city or state or legislative body can prudently choose to ignore them."¹⁷⁶

President Kennedy submitted to Congress on June 19, 1963, new and broadened civil rights proposals. He included a request to strengthen the President's Committee on Equal Employment Opportunity by giving it a permanent statutory basis, thus "assuring it of adequate financing and enforcement procedures."¹⁷⁷ He also pledged renewed "support of pending Federal Fair Employment Practices legislation, applicable to both employers and unions."¹⁷⁸

President Kennedy underscored his reason to press for legislation when he added:¹⁷⁹

¹⁷⁶"Radio and Television Report to the American People on Civil Rights," June 11, 1963, Public Papers of the Presidents, 1963, p. 469.

¹⁷⁷"Special Message to the Congress on Civil Rights and Job Opportunities," June 19, 1963, Public Papers of the Presidents, 1963, p. 490.

¹⁷⁸Ibid., p. 491.

¹⁷⁹Ibid., p. 483.

In short, the time has come for the Congress of the United States to join with the Executive and Judicial Branches in making it clear to all that race has no place in American life or law . . . the result of continued federal legislative inaction will be continued, if not increased, racial strife

During June and early July President Kennedy met with scores of business leaders, labor leaders, religious leaders, educators, lawyers, and representatives of women's organizations to urge support for his civil rights program.¹⁸⁰ The proposed bill subsequently passed and was signed into law on July 2, 1964, by President Lyndon B. Johnson.

The Civil Rights Act of 1964¹⁸¹ included a fair employment title, endorsed but not submitted by President Kennedy, who doubted its chances for acceptance.¹⁸²

Also in his June 19 civil rights message, President Kennedy repeated his earlier announcement¹⁸³ that he would issue an executive order extending the authority of

¹⁸⁰Public Papers of the Presidents, 1963, p. 432.

¹⁸¹78 Stat. 241 (1964).

¹⁸²Lewis and The New York Times, op. cit., p. 124.

¹⁸³"Statement by the President on Equal Employment Opportunity in Federal Apprenticeship and Construction Programs," June 4, 1963, Public Papers of the Presidents, 1963, p. 439.

the Committee on Equal Employment Opportunity to include the construction of buildings and other facilities undertaken wholly or in part as a result of grant-in-aid programs. Although many construction programs undertaken by state and local governments and private agencies participating in federal grant-in-aid programs contained nondiscrimination requirements, practices and enforcement had not been uniform.¹⁸⁴

Conclusion

At the outset of their administrations Presidents Truman, Eisenhower, and Kennedy pledged affirmative action in the field of civil rights, and, with the exception of Eisenhower, in the specific area of fair employment practices. The remaining policy decisions, therefore, were largely matters of alternatives and timing.

The President is able to control employment practices in private industry only in part through the instrument of the government contract. Legislation is preferable to the executive order in the field of private employment from the standpoint of coverage, funds, and to a lesser extent, enforcement.

¹⁸⁴Ibid.

The decision to request legislation, however, hinged upon presidential determinations of the chances for success and the likely effect upon competing legislative priorities. An additional consideration for President Eisenhower was his lack of confidence in legislation to solve civil rights problems. President Truman sought fair employment practices legislation at the beginning of his administration, but dropped the proposals after repeated failures. Neither President Eisenhower, nor President Kennedy, sought fair employment practices legislation initially.

Congressmen opposing FEPC legislation used institutional procedures to block passage of bills from 1942 until 1964. President Truman issued an executive order when he could not get congressional action and timed its issuance to provide the Democrats with campaign material in 1948. Presidents Eisenhower and Kennedy issued executive orders in the absence of both congressional action and presidential support for legislation. President Eisenhower timed neither of his executive orders for particular political advantage. In fact, he made a point of trying to act quietly in order to avoid civil rights controversy. President Kennedy issued his executive order as an

alternative to honoring a campaign commitment to press for civil rights legislation.

While there was not sufficient support for fair employment practices legislation to overcome inertia and institutional barriers in both houses of Congress, neither was there sufficient congressional opposition to discourage the President from acting.¹⁸⁵ Furthermore, despite refusal to enact legislation, Congress tacitly approved the presidential actions by failing to pass contravening legislation. For example, Congress might have attached riders to the appropriations bills that provided funds for the agencies participating in the interdepartmental committees.

On the basis of these interpretations of the evidence, the conclusion seems warranted that the President

¹⁸⁵At one point, at least, majority sentiment in the House favored fair employment practices legislation. An FEPC bill passed the House when the Chairman of the Education and Labor Committee took it from the Rules Committee under the "21-day rule" and brought it to the floor for a vote. See pp. 98-99, supra.

For discussion of institutional barriers, such as the committee system, the seniority rule, Senate Rule XXII, and lack of party discipline, see Richard Bolling, House Out of Order (New York: E. P. Dutton, 1965), passim; James MacGregor Burns, The Deadlock of Democracy: Four-Party Politics in America (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1963), passim; Joseph S. Clark and Other Senators, The Senate Establishment (New York: Hill and Wang, 1963), passim; and Howard E. Shuman, "Senate Rules and the Civil Rights Bill: A Case Study," The American Political Science Review, LI (December, 1957), 955-975.

uses the executive order to establish general public policy with the force and effect of law if Congress will not act.

Furthermore, when widespread demand for legislation persists, and the policy goals cannot be attained administratively, the President uses the executive order rather than pressing for congressional action, if he determines that legislation is not likely to pass or that he might jeopardize competing legislative priorities.

C H A P T E R I V

FAIR EMPLOYMENT PRACTICES: IMPLEMENTATION

This chapter considers the implementation of the fair employment practices executive orders discussed in Chapter III. Since the declaration of a national policy of nondiscrimination does not necessarily result in equal employment opportunities in practice, the extent to which these policies were implemented helps to indicate the significance of policy-making by executive order.

The committees established by the fair employment practices executive orders obtained some statistical information on racial patterns in employment. However, since accurate statistical data for previous years are unavailable for comparative purposes, it is difficult to determine racial employment changes resulting from the issuance of the executive orders. Furthermore, the establishment of a racial pattern in employment does not necessarily establish the existence or absence of discrimination. The problem of discriminatory employment practices is not one in which measurable progress can be defined, since the entire

employment relationship is fraught with immeasurable, subjective factors, such as the personality of an employee or the reasons for choices that appointing officials make under the "rule of three."¹

Even if a precise statistical picture of discriminatory employment patterns could be devised, there would be no way of knowing with accuracy the extent to which employers, union leaders, and government executives change their policies because of a certain executive-order program or because of other factors. Consequently, the conclusions with regard to the effectiveness of the executive orders in altering discriminatory employment practices are impressionistic.

Proponents of FEPC legislation argue that the function of implementing nondiscrimination policies in government employment and under government contracts should

¹The NAACP urged in 1948 that regulations be changed so that the individual with the highest rating in a competitive exam would get the job. Congressional Quarterly Almanac, IV (1948), 423. In 1963 the NAACP advocated that where a Negro comes up along with whites and has the same general qualifications, he should, until the imbalance is corrected, be given the job. U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 205.

not be subject to revocation or modification by successive Presidents.² However, this may be an advantage. A study of the efforts to implement the six fair employment practices executive orders reveals that this device permits experimentation in finding solutions to a complex policy problem. The flexibility of executive order policy-making enables the President and his implementing machinery to move as rapidly as political circumstances permit.

Fair Employment Practices in Government

The successive executive orders dealing with discrimination in government employment illustrate a pattern of change in emphasis and an increase in the powers and responsibilities of the implementing machinery. Some advances were made under each of these committees, even though discrimination in government employment was not eliminated.

Executive Order No. 9980 anticipated the complaint procedure to be the main thrust of the attempt to

²U.S. House Judiciary Committee, Civil Rights Act of 1963: Report to Accompany H.R. 7152, House Report 914, 88th Cong., 1st Sess., 1963, pt. 1, pp. 57-58.

secure nondiscriminatory employment practices. However, after its first year of experience and the processing of only three appeals initiated under the Order, the Fair Employment Board decided that the number of formal complaints made could not be accepted as a true index of the extent to which discrimination might be practiced in the government.³ As a result, the Board undertook a positive program of a corrective nature in cooperation with the departments and agencies.⁴ The Board considered the negotiation that went on constantly to be an important and necessary adjunct to the implementation of the nondiscrimination policy.⁵

At the end of its second year, the Board reported:

Since the issuance of Executive Order 9980 a great and desirable change has taken place in the attitude of many Federal appointing officers toward the employment of minority groups. The existence of a continuing program designed to correct injustices when they occur has had a salutary effect on the rank and file of Federal employees, as well as on supervisory and administrative officials.⁶

³Fair Employment Board, First Report (not published), September 30, 1949, OF "2F," Truman Papers, Harry S. Truman Library.

⁴Ibid., p. 9.

⁵Ibid., p. 10.

⁶Second Report (not published), November 6, 1950, OF "2F," Truman Papers, Harry S. Truman Library.

While the opinion of the FEB may not be a good index to its effectiveness, others also credited the Board with achievements. The Labor Secretary of the National Association for the Advancement of Colored People remarked in 1949 that the existence of Executive Order No. 9980 had made those involved in a case that the NAACP had handled by negotiation conscious of the need to see that the eligible man was treated fairly.⁷ Presidential Assistant David K. Niles reported that the Board had been quite effective in several incidents with which he had close contact.⁸

At any rate, the antidiscrimination policies were effective enough to arouse comment from opponents. Representative John E. Rankin inserted in the Congressional Record:⁹

Something has happened to the members of the Civil Service Commission to cause them to attack the various departments and bureaus of this Government with racial minorities that are subjecting the

⁷Letter, Clarence Mitchell to James L. Houghteling, November 2, 1949, OF "2F," Truman Papers, Harry S. Truman Library.

⁸Memorandum, David K. Niles to Donald Dawson, December 12, 1950, OF "2F," Truman Papers, Harry S. Truman Library.

⁹82d Cong., 1st Sess., 1951, XCVII, A6399.

white women on the Federal payroll to indignities such as they never dreamed of a few years ago. You can hardly find a white gentile on the payroll in many of these bureaus; and the service has degenerated to an alarming degree.

In the Spring of 1952 one member resigned from the Board because the initial inertia had been overcome and the task ahead was just keeping the program moving.¹⁰ By that time, one-third of the government agencies had hired Negroes as supervisors of mixed white and Negro groups or employed them as executives and top-level scientific and professional workers for the first time in their history.¹¹

In its final report to the President, January 4, 1952, the Board concluded that the first phase of the program, procedures for equitable correction of injustices brought to light through formal complaints, was well established. However, the Board was not satisfied with the constructive measures to prevent racial and religious discrimination. It admitted making little real progress in

¹⁰Memorandum, R.P.A. to Steelman, May 27, 1952, OF "2F," Truman Papers, Harry S. Truman Library.

¹¹U.S. Senate Labor and Public Welfare Committee, Subcommittee on Labor and Labor Management Relations, Discrimination and Full Utilization of Manpower Resources: Hearings on S. 1732 and S. 651, 82d Cong., 2d Sess., 1952, 75.

determining the scope of the problem and in formulating effective preventive measures.¹²

One of the handicaps of the Fair Employment Board was the lack of factual knowledge concerning the extent to which minority groups of citizens were being employed in the government.¹³ A study of Negro employment was repeatedly postponed during the Truman administration, however, because of the fear of political repercussions.¹⁴ To meet the need for current information on minority group employment in government, the Eisenhower Committee, despite the opposition of representatives of some of the larger agencies, conducted a survey in late 1955 in five large cities with 17 percent of the total number of government employees. The survey revealed that Negroes constituted 23.4 percent of total federal employment in the five cities combined. Of all the Negroes employed, 42.7 percent were employed under

¹²Third Report (not published), (undated), OF "2F," Truman Papers, Harry S. Truman Library.

¹³Letter, James L. Houghteling to Donald S. Dawson, June 6, 1951, OF "2F," Truman Papers, Harry S. Truman Library.

¹⁴Note (initial illegible) to Mr. D. (undated), OF "2F," Truman Papers, Harry S. Truman Library; Memorandum, M.L.F. to Mr. Dawson, December 11, 1951, "CSC-Fair Employment Board" Folder, Friedman Files, Harry S. Truman Library.

the Classification Act, which includes mostly white-collar jobs; 31.1 percent under Wage Boards, which covers many blue-collar jobs; and 26.2 percent were in a third category, most of which was Post Office employment. The breakdown by grade levels of the Negroes in the Classification Act jobs showed that 85.4 percent were in the lowest four grades.¹⁵ So far as the Committee was concerned, the real question that emerged from the survey was why Negroes were not in the higher level jobs, and whether qualified Negroes could advance to those jobs. Work went forward after that in the nature of consultations, the institution of training courses, and the holding of area conferences.¹⁶

The Committee conducted a second survey of the same five cities four years later. This survey dealt only with the employment of Negroes in Classification Act jobs from grades 5 through 15 and revealed that during the four-year period Negro employment in those grades had increased by 86 percent. The survey also showed that the percentage of Negroes in the grades GS-5 through GS-15 increased from

¹⁵President's Committee on Government Employment Policy, Five-City Survey of Negro-American Employees of Federal Government [1957], passim.

¹⁶President's Committee on Government Employment Policy, Fourth Report, 1961, pp. 23-24.

3.7 percent in 1956 to 5.9 percent in 1960. Finally, the survey showed that these increases were distributed throughout the middle and upper grades and not confined to grade 5, the lowest in the study.¹⁷ However, the U.S. Civil Rights Commission, established by Congress in 1957, noted that the increase in the numbers of Negroes moving to better paying and more responsible positions did not necessarily indicate the effectiveness of the government's nondiscrimination program, as similar improvements occurred in private enterprise in the same years.¹⁸

In its final report the Committee stated that "there is little doubt that during the past 6 years the Federal Government's own internal policy of equality of opportunity has gained considerable momentum."¹⁹ The Committee noted, however, that the objective of attaining a civil service unimpaired by discrimination had not been reached, and that many problems confronting the Committee had not been solved.²⁰

¹⁷Ibid., p. 24.

¹⁸Report, 1961, Bk. 3, p. 37.

¹⁹President's Committee on Government Employment Policy, Fourth Report, 1961, p. 45.

²⁰Ibid., p. 43.

The Committee concluded that in the last analysis, as with many other administrative policies, the ultimate effectiveness of the nondiscrimination policy depended upon the attitudes of acceptance on the part of thousands of administrators who were involved in implementing the non-discrimination program.²¹

President Kennedy took advantage of the experience gained in the previous programs when he replaced the Committee on Government Employment with the Committee on Equal Employment Opportunity. The two previous groups had recognized the need for an adequate body of objective, comparative information on the employment status of minority group members in government and the necessity for positive action. Both of these were met with specific requirements in Executive Order No. 10925. For the first time an executive order instructed agencies and departments to take affirmative action to eliminate employment discrimination. The Order also directed the Committee to study immediately the employment practices of the government. In response, the Committee decided to take an annual census of minority employment in government agencies.²² This not only made

²¹Ibid., p. 33.

²²The President's Committee on Equal Employment Opportunity, Report to the President, November 26, 1963, p. 1.

possible the monitoring and appraisal of agency employment practices and established a base for corrective action, but also served as a tool for increasing the motivation of agency management to take positive action.²³

The first government-wide survey, conducted in June, 1961, bore out the contention that most Negro employees were concentrated in the lower grades of government employment and that relatively few had progressed to the middle and upper grades. Consequently, Vice President Lyndon B. Johnson, Committee chairman, instructed all agencies to make an intensive survey of their personnel to seek out persons who had been "passed over" unfairly because of their race, creed, color or national origin, and to adjust such situations.²⁴ Furthermore, Negro high school and college graduates were intensively sought out and recruited for government employment.²⁵ The second

²³Ibid., p. 28.

²⁴Ibid., p. 3.

²⁵"Remarks to Participants in the Signing of Equal Opportunity Agreements," June 22, 1962, Public Papers of the Presidents, 1962, p. 506; "Special Message to the Congress on Civil Rights," February 28, 1963, Public Papers of the Presidents, 1963, p. 228.

The pressures of the Administration for recruitment and promotion of Negroes generated aroused opposition. See, for example, Cong. Rec., 88th Cong., 1st Sess., 1963, CIX, 9784, 11997-11998, 12757, A3975, A4094, A4831.

and third annual surveys, made in June 1962 and June 1963, showed significant improvement in the employment status of Negroes.²⁶

These measures have had at least some effect on the employment practices in government. Government estimates show the ratio of nonwhites to all government employees for April of each of the following years to be 5.6 percent in 1940, 10.7 percent in 1960, 12.1 percent in 1962,²⁷ and 13.1 percent in 1963.²⁸ Negroes have formed the following percentages of the United States population: 9.8 in 1940, 10.0 in 1950, and 10.6 in 1960.²⁹ The extent to which this estimated change can be attributed to the

²⁶For example, of all Negroes employed in Classification Act jobs, 71.6 percent were in the lowest four grades in 1961, 69 percent in 1962, and 65.2 percent in 1963; 27.2 percent were in the seven middle grades in 1961, 29.5 percent in 1962, and 32.9 percent in 1963; and 1.2 percent were in the seven upper grades in 1961, 1.5 percent in 1962, and 1.9 percent in 1963. President's Committee on Equal Employment Opportunity, op. cit., pp. 3, 38-39.

²⁷Based on unpublished data from the household survey of the Bureau of Labor Statistics and the Bureau of the Census, in Marion Hayes, "A Century of Change: Negroes in the U.S. Economy, 1860-1960," Monthly Labor Review, LXXXV (December, 1962), 1365.

²⁸The President's Committee on Equal Employment Opportunity, op. cit., p. 38.

²⁹Hayes, loc. cit., p. 1359.

government's leadership is not clear. However, charts prepared by the Bureau of Labor Statistics show that in the civil service and in the armed forces, in which fair employment practices were mandatory and under review, Negroes attained a substantially larger share of occupations requiring skill and responsibility than in the private economy.³⁰ Perhaps more significant, however, is the fact that minority group organizations credited the presidential committees with having accomplished some promising results.³¹

Fair Employment Practices in Private Enterprise
Under Government Contract

With regard to private employment under government contracts, the successive executive orders barring discrimination again illustrate a change in emphasis and a strengthening of enforcement provisions, and some achievements in furthering minority employment opportunities.

³⁰Chart 9, U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 105.

³¹See, for example, ibid., pp. 430, 461-462; U.S. House Education and Labor Committee, Special Subcommittee on Labor, Hearings on Equal Employment Opportunity, 87th Cong., 1st Sess., 1961, pt. 1, p. 24.

When President Eisenhower created the Government Contract Committee, he charged it with definite operating functions, whereas the previous committee had functioned largely as a study group. The Eisenhower Committee, directed by the Order to make recommendations to the contracting agencies for improving and making more effective the nondiscrimination provisions of government contracts, urged the agencies to make a positive effort to obtain compliance.³²

The Executive Order required the Committee to carry on an extensive educational program with leaders of business and industry, labor unions, trade associations, educators, clergy and other interested segments of the general public.³³ The Committee also maintained liaison with many private and public agencies charged with the responsibility and duty of eliminating employment discrimination.³⁴

³²Government Contract Committee (President's), Pattern for Progress, pp. 2-3.

³³See the report of the Committee-sponsored Religious Leaders Conference held in Washington May 11, 1959, Faiths Joined for Action [1960].

³⁴See list of cooperating public and private agencies in Government Contract Committee (President's), Five Years of Progress, 1953-1958: A Report to President Eisenhower, 1958, pp. 35-36.

Support by the President is important in an implementation effort that depends largely on leadership rather than penal sanctions. President Eisenhower gave personal attention to the implementation of the Order. Prior to the first formal meeting of the Committee, he asked the members of the Cabinet and the heads of the independent agencies to send to all officials with procurement responsibilities a copy of the new Executive Order and to explain that they would be expected to take the initiative in giving daily meaning to the government's nondiscrimination policy.³⁵

President Eisenhower also met with representatives of twenty-two state and municipal antidiscrimination agencies in Washington April 22, 1955,³⁶ and he called a Conference on Equal Job Opportunity in Washington--a Conference attended by fifty-five presidents and board chairmen of some of the nation's largest business and industrial firms on October 25, 1955.³⁷

³⁵The New York Times, September 15, 1953, 28:2-3.

³⁶Government Contract Committee (President's), Five Years of Progress, p. 31.

³⁷Government Contract Committee (President's), The Story of the President's Committee on Government Contracts [1956], p. 9.

Several civil rights organizations and also the United States Civil Rights Commission credited the Eisenhower Committee for effective work in promoting the cause of equality of opportunity in employment.³⁸ Some questionnaire surveys have revealed that the government's non-discrimination program may not have been effective in substantially increasing the overall employment of Negroes, or the numbers employed above unskilled or semiskilled levels.³⁹ Even so, the Civil Rights Commission, in its study of fair employment practices, credited the Committee with laying the groundwork for advances by establishing the machinery necessary for implementation of the nondiscrimination provision; by making some progress in promoting the program through publicity, education, and persuasion, to those responsible for its implementation; and by opening new job opportunities for Negroes through direct negotiation with government contractors.⁴⁰ The Commission

³⁸Government Contract Committee (President's), Five Years of Progress, p. 37; ibid., Pattern for Progress: Final Report to President Eisenhower, pp. 6, 9; U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 66.

³⁹U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 66.

⁴⁰Ibid.

concluded that during the last few years of its existence, the Committee's most significant contribution may have been its concentration on the problems of motivation and training of minority group youth, since a dearth of qualified Negro applicants often exists when new employment opportunities are opened to Negroes.⁴¹

Fred Lazarus, a member of Eisenhower's Government Contract Committee, and Abe Fortas, a Washington attorney, were instrumental in drafting Executive Order No. 10925.⁴² Although the contracting agencies retained primary responsibility for obtaining compliance, under the new Order the overall responsibility and authority were clearly vested in the Committee on Equal Employment Opportunity.

Other changes were prompted by the experience of the preceding committee. Eisenhower's Committee, for example, had attempted to review a contractor's employment policies and practices in the absence of a complaint

⁴¹Ibid., pp. 69-70. See Government Contract Committee (President's), Fourth Annual Report on Equal Job Opportunity, 1957, pp. 9, 15-16.

⁴²President's Committee on Equal Employment Opportunity, op. cit., p. 1.

by instituting in 1957 a compliance survey program. This survey constituted a physical inspection of the facility, by a compliance official of the contracting agency, at the site where the work was being performed, but only approximately five hundred plants could be surveyed each year.⁴³ Executive Order No. 10925 required that each contractor submit an annual manpower profile as proof of affirmative action.

Also, the previous committee on occasion had been faced with the problem of an uncooperative contracting agency.⁴⁴ The new Order gave the Committee on Equal Employment Opportunity itself the authority to investigate complaints and to take final action on them, including the imposition of sanctions.

In spite of the emphasis on positive action, the Committee on Equal Employment Opportunity did not neglect the complaint procedure that had been a basic ingredient of the government's nondiscrimination program. All of the committees recognized the complaint process as

⁴³Government Contract Committee (President's), Sixth Report to President Eisenhower [1959], p. 8.

⁴⁴U.S. Commission on Civil Rights, Report, 1961, Bk. 3, p. 68.

useful in providing a method whereby the citizen might bring to the attention of top officials any evidence that contractors might not be in compliance with the program.⁴⁵ The Equal Employment Opportunity Committee processed an unprecedented number of complaints, a development attributed to confidence on the part of employees that something would be done about discriminatory situations.⁴⁶

Another important aspect of the Committee's work was the voluntary programs. The Committee decided that public self-expression of new purpose by employers and unions was an effective stimulant to voluntary progress toward the establishment of real equality of opportunity.⁴⁷ Consequently, the Committee undertook two programs to secure the voluntary cooperation of employers and unions in promoting equal employment opportunity: Plans for Progress and Programs for Fair Practices. By 1963 one hundred and

⁴⁵Government Contract Committee (President's), Second Annual Report, p. 5; President's Committee on Equal Employment Opportunity, op. cit., p. 6.

⁴⁶President's Committee on Equal Employment Opportunity, op. cit., p. 4.

⁴⁷U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 391.

fifteen companies, employing more than five and one-half million persons, had signed Plans for Progress.⁴⁸ These firms, some of which did not hold government contracts, agreed to take the initiative in removing discrimination in employment.⁴⁹ Data available by 1963 indicate that almost 25 percent of the new employees of these companies was minority group members, including significant numbers in classifications from which they were previously almost entirely excluded.⁵⁰

The Order authorized the Committee to use its best efforts and the power of publicity to cause labor unions to comply with the purposes of the Order. The Committee signed Programs for Fair Practices with one hundred and seventeen AFL-CIO international union affiliates that had a combined membership of almost thirteen million workers and represented about 85 percent of the membership of the AFL-CIO.⁵¹ Programs for Fair Practices enlisted the active

⁴⁸President's Committee on Equal Employment Opportunity, op. cit., p. 108.

⁴⁹Ibid. One university, Wayne State, signed a Plan for Progress.

⁵⁰U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 391.

⁵¹Ibid.; "Special Message to the Congress on Civil Rights," February 28, 1963, Public Papers of the Presidents, 1963, p. 227.

support of the international union officials in the Committee's efforts to end employment discrimination.

These voluntary programs illustrate the ability of a committee, established by executive order, to overcome the limitations of legal power by utilizing presidential prestige and leadership in attempting to solve a national problem. Furthermore, the voluntary programs illustrate the Committee's resourcefulness, supporting John A. Roosevelt's contention that "the membership of the committee is almost as important as its charter."⁵²

The President also supported the work of the Committee. He participated in White House ceremonies at which Plans for Progress and Union Programs for Fair Practices were signed.⁵³ The statements he made on these occasions gave the efforts of the Committee and the cooperating groups good press coverage.

President Kennedy furthered the executive order policy in other ways. To be assured of progress under the

⁵²Government Contract Committee (President's), Report of Discussions: Minority Community Resources Conference, January 15, 1958, p. 6.

⁵³Public Papers of the Presidents, 1961, pp. 396, 504; ibid., 1962, pp. 117-118, 505-507, 826-827; ibid., 1963, p. 25.

Order, in 1963 he requested a company-by-company, plant-by-plant, union-by-union report from the Committee.⁵⁴ On June 4, 1963, the President directed the Secretary of Labor in the conduct of his duties under the Federal Apprenticeship Act and Executive Order No. 10925 to require that the admission of young workers to apprenticeship programs be on a completely nondiscriminatory basis.⁵⁵ He also asked that all federal construction programs be reviewed to prevent any racial discrimination in hiring practice, either directly in the rejection of available qualified Negro workers or indirectly by the exclusion of Negro applicants for apprenticeship training.⁵⁶

Labor leaders credited the Committee's success in getting changes to the vigorous support of the Committee's efforts by the President and the assurance from Committee members that sanctions would be applied.⁵⁷ The

⁵⁴"Special Message to the Congress on Civil Rights and Job Opportunities," June 19, 1963, Public Papers of the Presidents, 1963, p. 490.

⁵⁵"Statement by the President on Equal Employment Opportunity in Federal Apprenticeship and Construction Programs," June 4, 1963, Public Papers of the Presidents, 1963, p. 439.

⁵⁶Ibid.

⁵⁷The New York Times, April 8, 1961, 1:1; U.S. Senate Labor and Public Welfare Committee, Subcommittee on

Committee on Equal Employment Opportunity reported in 1963, for the first time, that "there has been a basic change in attitude on the part of most of the managers of American industry and the heads of our responsible labor unions."⁵⁸ This was substantiated at a Senate committee hearing in 1963 by witnesses who stated that they had been aware of a new attitude within the past year and felt that it was due to the fact that Washington had been pressing harder than in earlier years.⁵⁹

The efforts of three Presidents⁶⁰ did not eliminate discriminatory practices in private employment. The House Committee on Education and Labor concluded in 1963 after hearing twenty-eight witnesses in ten days of hearings.

Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 163.

⁵⁸The President's Committee on Equal Employment Opportunity, op. cit., pp. 132-133.

⁵⁹U.S. Senate Labor and Public Welfare Committee, Subcommittee on Employment and Manpower, Equal Employment Opportunity: Hearings on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess., 1963, p. 481.

⁶⁰The implementation of Executive Order No. 11114 is not considered because the rules and regulations for assuring equal opportunity in this broad field were just being put into effect at the time of President Kennedy's death.

that "discrimination in employment because of race, religion, color, national origin, or ancestry is a pervasive practice" with an adverse impact upon the nation.⁶¹ Nevertheless, executive leadership during a period of sixteen years had some impact upon the employment opportunities of minority groups--enough, at any rate, for the minority groups themselves to appreciate the governmental efforts. For example, the Executive Director of the Chicago Urban League noted in 1961 that "the vast rise that we have made in the last 20 years came about largely because of the leadership that we did get from the government."⁶²

Furthermore, aside from any positive achievements the presidential committees may have made in opening jobs and avenues of promotion to members of minority groups, the Presidents at least laid the groundwork for future legislation and for statutory committees. The Equal Employment Opportunity Commission, when it was created by Congress in 1964, had the benefit of many studies that had been made

⁶¹Equal Employment Opportunity Act of 1963:
Report to Accompany H.R. 405, House Report 570, 88th Cong.,
1st Sess., 1963, p. 2.

⁶²U.S. House Education and Labor Committee,
Special Subcommittee on Labor, Hearings on Equal Employ-
ment Opportunity, 87th Cong., 1st Sess., 1961, pt. 1, p. 175.

in previous years and a large group of personnel experienced in coping with the problems of minority employment.

Conclusion

This chapter demonstrates that the executive order has certain advantages as an instrument for policy-making. In addition to enabling the President to establish national policies when popular demands are thwarted by institutional barriers in Congress,⁶³ the executive order enables the President to move as fast as political circumstances permit in a controversial area. Each of the executive orders considered in this chapter contained stronger provisions than the preceding one. Furthermore, the executive order permitted flexibility in the attempt to find methods for coping with the problem of discriminatory employment practices.

On the other hand, potential danger exists in the use of the tremendous economic power of the government to effect policy decisions made in the executive branch, especially since judicial review of executive orders is not extensive. Even so, the implementation of

⁶³See Chap. III, pp. 95-105, supra.

presidential policy is limited by congressional appropriations and is confined to an area bounded by the consent of a large segment of the American public and by the President's own view of his constitutional authority.

CHAPTER V

FAIR HOUSING

President John F. Kennedy fulfilled a campaign promise November 20, 1962, when he issued Executive Order No. 11063,¹ which established for the first time an official national policy of nondiscrimination in federally assisted housing.² The order prohibited discrimination in the sale, lease, or use of future housing constructed by the federal government or guaranteed under Federal Housing Administration or Veterans Administration programs, and created a President's Committee on Equal Opportunity in Housing to help implement the provisions of the Order.

¹27 Fed. Reg. 11527. See Appendix VIII for text of Executive Order No. 11063.

²"Nondiscrimination," "open occupancy," and "fair housing" are terms that are used interchangeably in this chapter to mean that the benefits of federally-assisted housing are made available to all Americans without regard to their race, color, creed, or national origin. "Segregated" patterns of housing result from discriminatory policies and practices. However, the Public Housing Authority has used the term "equitable provision" of housing to mean "nondiscrimination" in providing public housing for all racial groups. PHA's use of these terms did not exclude the possibility of segregation, a practice that was left to the discretion of the local public housing authorities.

The first part of this chapter analyzes some factors that influenced the President's decision to issue the Order. These include the existing national policy, the extent of discrimination, and the pressures for executive action. The second part briefly outlines the history of congressional disposition of proposals prohibiting discrimination in federally assisted housing. The third part suggests the factors responsible for the timing of the Order. The final two sections consider its implementation, and subsequent executive and congressional action.

This chapter presents evidence that the President uses the executive order to establish general public policy when Congress does not act and when pressure for executive action exists. Furthermore, it shows that an order may be timed to avoid publicity in order not to arouse congressional reprisal.

Factors Prompting Presidential Decision

Existing National Policy

When Kennedy assumed the presidency, the government had been a participant in housing programs for three decades. During this time only minor gains toward nondiscrimination in housing had been made through a few

administrative rules and regulations, and yet the national government had become "the most important factor in the national housing picture."³ Indeed, it has been said of housing that "there is no nondefense segment of American economic life so dependent on the Federal Government."⁴

The federal housing programs include both publicly owned and operated housing and financial assistance for private housing. As a matter of fundamental policy, these programs from the beginning have operated through private industry or local public authorities.⁵ But by the time the federal government entered the housing scene, racial discrimination had already become the practice of the private housing industry.⁶ Therefore, government agencies sustained discriminatory practices by leaving patterns of occupancy

³Hughes, op. cit., p. 121.

⁴U.S. House Banking and Currency Committee, Subcommittee on Housing, Housing Act of 1957: Hearings, 85th Cong., 1st Sess., 1957, p. 566,

⁵Commission on Race and Housing, Where Shall We Live? (Berkeley: University of California Press, 1958), p. 49.

⁶U.S. Commission on Civil Rights, Report, 1961, Bk. 4, p. 16.

to local determination.⁷ The central finding of the U.S. Commission on Civil Rights in 1961 was:⁸

The private housing and home finance industries . . . profit from the benefits that the Federal Government offers--and on racial grounds deny large numbers of Americans equal housing opportunity. At all levels of the housing and home finance industries--from the builder and the lender to the real estate broker, and often even the local housing authority--Federal resources are utilized to accentuate this denial.

Consequently, the major racial issue in the federal housing program has been how far the national government should go in controlling the discriminatory practices of private business and local public agencies in the distribution of federal housing benefits.⁹ Policies with regard to the housing of racial minorities have depended, as a practical matter, on the agencies involved. Although the Civil Rights Act of 1866, still in effect, stipulates that "all citizens of the United States shall have the same rights in every state and territory, as is enjoyed by white citizens thereof, to . . . purchase . . . real and personal property . . .,"¹⁰ no specific nondiscrimination provision

⁷See Commission on Race and Housing, op. cit., p. 29.

⁸Report, 1961, Bk. 4, p. 140.

⁹Commission on Race and Housing, op. cit., p. 49.

¹⁰14 Stat. 27 (1866).

has been included in any federal legislation that authorized financial assistance to housing. On this basis, the housing agency administrators showed a reluctance to deal with the problem of discrimination internally. For example, B. C. Bovard, as General Counsel of the FHA, which insures loans for private housing, said:¹¹

I know of nothing in the National Housing Act or in the Rules and Regulations thereunder which would authorize the Commissioner to require that mortgagors disregard racial considerations in the selection of their tenants.

In publicly owned housing, a program started in a limited way in 1934, the policy was always based on equitable participation of minorities, even though the decision as to segregation was left to the local public housing authorities.¹² On the other hand, the Federal Housing

¹¹As quoted in Letter, Arthur B. Spingarn, Walter White, Louis T. Wright to Harry S. Truman, September 25, 1951, Nash Files, Harry S. Truman Library.

¹²The Public Works Administration [National Industrial Recovery Act of 1933, 48 Stat. 195] had a housing division. This was incorporated into the Public Housing Administration after the passage of the Housing Act of 1937 [50 Stat. 888]. The PWA Housing Division set the precedent of utilizing racial relations specialists to assist in the formulation of overall agency policy and procedure as it affected racial minorities. National Housing Agency, Racial Relations Service, Minority Group Considerations in

Administration¹³ initially encouraged racial segregation on the theory that property values in a "white" neighborhood deteriorate when Negroes move into it. The 1938 Underwriting Manual said: "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." To this end the Manual recommended use of restrictive covenants to insure against "inharmonious racial groups" and even provided a model covenant for inclusion in real estate contracts.¹⁴

Prompted by criticism from various groups,¹⁵ FHA removed all direct references to race in the 1947 edition

Administration of Government Housing Program, July 11, 1947. [Mimeo.], Records of President's Committee on Civil Rights, Harry S. Truman Library.

In 1951 the Public Housing Administration formally adopted a requirement that equitable provision be made for all racial groups in low rent housing projects in order to be eligible for PHA assistance, but continued to leave the decision on segregation to local authorities. Public Housing Administration, Low Rent Housing Manual §102.1, February 21, 1951, as cited in "Notes, Discrimination Against Minorities in the Federal Housing Programs," Indiana Law Journal, XXXI (1956), 503.

¹³The National Housing Act of 1934 [48 Stat.1246] authorized the President to establish the Federal Housing Administration.

¹⁴U.S. Commission on Civil Rights, Report, 1961, Bk. 4, pp. 16, 980.

¹⁵Ibid., p. 24. Also see National Association for the Advancement of Colored People, Memorandum Covering the

of the Underwriting Manual, but the Commissioner wrote to employees in field offices that the change in language did not remove the responsibility to take into account factors of the local market that reflect upon value.¹⁶

The following year, the Supreme Court, on May 3, 1948, held that racial restrictive covenants were unenforceable in the courts.¹⁷ Nineteen months later the Federal Housing Administration reluctantly changed its underwriting regulations¹⁸ and ruled that FHA would not insure loans on property that had a racial covenant recorded after

Present Discriminatory Policies of the Federal Housing Administration, October 28, 1944, [Mimeo.], copy in Records of President's Committee on Civil Rights, Harry S. Truman Library.

¹⁶Memorandum, November 15, 1946, as quoted in National Housing Agency, Racial Relations Service, Minority Group Considerations in Administration of Governmental Housing Programs, July 11, 1947, p. 17, copy in Records of the President's Committee on Civil Rights, Harry S. Truman Library.

¹⁷In Shelley v. Kraemer, 334 U.S. 1 (1948), the enforcement of private covenants forbidding the transfer of real property to persons of a certain race or color by state courts was held to constitute denial of equal protection of the laws. The Court held in Hurd v. Hodge, 334 U.S. 24 (1948), on the basis of the 1866 Civil Rights Act, that a restrictive covenant was unenforceable in the federal court of the District of Columbia.

¹⁸FHA changed its regulations under pressure and the announcement of the change was made by the Justice Department rather than the Housing Agency. Memorandum, Philleo Nash to Donald S. Dawson, June 16, 1952, Nash Files, Harry S. Truman Library.

February 15, 1950.¹⁹ At the same time, it announced that the racial composition of a neighborhood "is not a consideration in establishing eligibility."²⁰ Similar rules were adopted at the same time by the Veterans Administration.²¹

Despite the new regulations, FHA continued to insure mortgages of builders and developers who were excluding racial or religious minorities, as long as the covenants were not recorded.²² The FHA Commissioner explained that he had "no authority to prevent racial discrimination in leasing or selling homes . . . after the developers built their houses."²³

¹⁹"Statement by Solicitor General Philip B. Perlman at Luncheon Session of State-Wide Conference of New York State Committee on Discrimination in Housing," copy of news release in Spingarn Papers, Harry S. Truman Library. Hereinafter cited as Perlman Statement.

²⁰Federal Housing Administration, Underwriting Manual, §303, December, 1949, as quoted in U.S. Commission on Civil Rights, Report, 1961, Bk. 4, p. 25.

²¹Perlman Statement.

²²One of the best known incidents was the Levittown project on Long Island. FHA denied an application for loan insurance that included a racially restrictive covenant, but when the covenant was stricken from the application, FHA approved the guaranty and the developers proceeded to reject applications of Negroes. See the newspaper articles and editorials regarding the FHA approval of the Levittown project reprinted in Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 8657-8658.

²³Franklin Richards, as quoted by Lem Graves, Washington correspondent of the Pittsburgh Courier, reprinted in Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 8658.

Through the executive branch, President Truman worked to secure nondiscrimination policies within the departments. When Philip B. Perlman, Solicitor General, announced that the FHA was amending its rules, he stated that President Truman "has been working on this matter for some time, and is most happy over the result of his efforts."²⁴

Truman probably did not overtly push nondiscrimination in housing because he had urged Congress to enact comprehensive housing legislation for four years before the National Housing Act of 1949 passed. The Act, when finally passed, provided an important argument for nondiscriminatory policy in that it set, for the first time, a national housing "goal of a decent home and a suitable living environment for every American family."²⁵

After the Housing Act passed, civil rights advocates, including the National Committee Against Discrimination in Housing, the National Association for the Advancement of Colored People, and some congressmen urged the

²⁴Perlman Statement.

²⁵63 Stat. 413 (1949). President Kennedy emphasized later that "this objective cannot be fulfilled as long as some Americans are denied equal access to the housing market because of their race or religion." "Statement by the President on Equal Opportunity in Housing," April 12, 1962, Public Papers of the Presidents, 1962, p. 324.

President to issue an executive order banning discrimination in housing.²⁶ However, in addition to the chance of congressional reprisal regarding the housing program, President Truman recognized that his advisory Committee on Civil Rights had not recommended presidential action in this area and had split almost evenly on the proposal that Congress condition federal financial assistance on the absence of racial discrimination.²⁷ The White House staff considered the proposal to be so controversial that the President did not mention it in his civil rights message to Congress or in the proposed bill.²⁸ In fact, the White House staff discouraged congressional attention to discrimination in housing:²⁹

We are making progress in the practice of non-discrimination in the field of housing as we are in

²⁶Letters, Abraham J. Multer to Harry S. Truman, April 24, 1951; Arthur B. Spingarn, Walter White, Louis T. Wright to Harry S. Truman, September 25, 1951; Walter White to Philleo Nash, October 16, 1951; J. K. Javits to Harry S. Truman, October 26, 1951, all in the Nash Files, Harry S. Truman Library.

²⁷To Secure These Rights, p. 166.

²⁸"Suggested Outline of Omnibus Civil Rights Bill of 1948," "Civil Rights File," Spingarn Papers, Harry S. Truman Library.

²⁹Memorandum, Philleo Nash to Charles S. Murphy, September 20, 1951, Nash Files, Harry S. Truman Library.

other fields, by the use of administrative measures, far more rapidly than we will if we engage in legislative battles which arise when hard and fast clauses are introduced on the Hill.

Shortly after Eisenhower assumed the presidency, he established an Advisory Committee on Government Housing Policies, under the chairmanship of Housing and Home Finance Administrator, Albert M. Cole. The Committee made no recommendations regarding executive or legislative action with respect to minority housing in its report to the President in 1953.³⁰

President Eisenhower, in his housing message to Congress in early 1954, indicated that during his administration also action regarding racial discrimination in housing would be taken at the agency level.³¹

. . . the administrative policies governing operations of the several housing agencies must be, and they will be, materially strengthened and augmented in order to assure equal opportunity for all of our citizens to acquire, within their means, good and well-located homes.

³⁰President's Advisory Committee on Government Housing Policies and Programs, Report: Recommendations on Government Housing Policies and Programs (1953).

³¹"Special Message to the Congress on Housing," January 25, 1954, Public Papers of the Presidents, 1954, p. 198.

Nevertheless, three times during the next six months he was noncommittal when asked what steps had been taken to implement his message,³² and he finally answered:³³

You have asked me a question that if I would say what was going to be done, I would have to say I haven't any plan here I can expose to you.

Eisenhower did not favor tying the problem of civil rights to that of housing:³⁴

. . . it seems to me always there is the effort to solve two problems at one time, in one major effort. Now, you want to solve the civil rights problem by housing . . . I personally believe these problems should not be put together and then try to solve them.

Nevertheless, President Eisenhower did emphasize that it was his determination that public funds not be used to foster racial discrimination in any area of national governmental activity:³⁵

³²News conferences of April 7, May 5, and August 4, 1954, all in Public Papers of the Presidents, 1954, pp. 386, 453, 681.

³³"News Conference," August 4, 1954, Public Papers of the Presidents, 1954, p. 681.

³⁴"News Conference," February 4, 1959, Public Papers of the Presidents, 1959, p. 162.

³⁵"News Conference," August 5, 1954, Public Papers of the Presidents, 1954, p. 681.

I have tried as hard as I know how to have accepted this idea, that where Federal funds and Federal authority are involved, there should be no discrimination based upon any reason that is not recognized by our Constitution. I shall continue to do that.

The pressure begun during the Truman administration for a fair housing executive order continued through the Eisenhower administration with recommendations from many groups.³⁶ But Eisenhower's Housing and Home Finance Administrator, Albert M. Cole, was opposed to the conditioning of federal assistance upon any agreement that the recipients of the aid eliminate racial segregation.³⁷

The role of the Federal Government in the housing programs is to assist, to stimulate, to lead, and sometimes to prod, but never to dictate or coerce, and never to stifle the proper exercise of private and local responsibility.

Norman P. Mason, who succeeded Cole as Housing and Home Finance Administrator in 1959, suggested that the issuance of an executive order making federally financed housing

³⁶Briefs were submitted to the President, for example, by the American Friends Service Committee, the National Urban League, the National Association for the Advancement of Colored People, and the National Committee Against Discrimination in Housing. Trends in Housing, VI (September-October, 1962), 3.

³⁷Letter to Senator Bush, reprinted Cong. Rec., 84th Cong., 2d Sess., 1956, CII, 10745-10746.

available on an open occupancy basis should not be taken "until we have more fully caught up with the housing needs of America [as] it . . . might do more harm than good."³⁸

Therefore, at the end of the Eisenhower administration the policy remained one of local control of occupancy patterns in federally assisted housing, even though the housing agencies had issued some rules and regulations regarding discrimination.

Existence of Discrimination

By the time John F. Kennedy was inaugurated, the few administrative regulations dealing with racial discrimination in federally assisted housing had had little noticeable effect. The Commission on Race and Housing asserted in 1958 that "[h]ousing and residence . . . have proved probably the most resistant of all fields to demands for equal treatment." "The decade 1940-1950," according to the Commission, "witnessed scant improvement in the housing conditions of nonwhites, although the white population, in

³⁸U.S. Civil Rights Commission, Hearings on Housing, 1959, II, 35.

spite of the general scarcity of housing, registered significant gains in housing space per capita."³⁹

The U.S. Commission on Civil Rights concluded in its 1959 Report, and repeated in the 1961 Report, that two basic facts constituted the nation's central housing problem:⁴⁰

First, a considerable number of Americans, by reason of their color or race, are being deprived equal opportunity in housing.

Second, the housing disabilities of colored Americans are part of a national housing crisis involving a general shortage of low-cost housing.

The Commission concluded that "housing . . . seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay."⁴¹

Furthermore, despite changes in administrative policy between the 1930's and 1961, estimates presented to the Commission on Civil Rights show that less than 2 percent of the new houses insured by the Federal Housing Administration from 1946 to 1959 were available to nonwhites.⁴² Like

³⁹Op. cit., p. 3.

⁴⁰Report, 1961, Bk. 4, pp. 144-145.

⁴¹Report, 1959, p. 534; Report, 1961, Bk. 4, p. 1.

⁴²U.S. Commission on Civil Rights, Report, 1961, Bk. 4, p. 69.

FHA, the Veterans Administration does not keep racial statistics, but the 1956 National Housing Inventory indicated that 2.9 percent of VA-loan homes were owned by nonwhites, whereas about 7.5 percent of the veterans of World War II and Korea were nonwhite as of June 30, 1955.⁴³

On the other hand, nonwhite occupancy of public housing units increased from 37.9 percent in 1952 to 46 percent in 1961. At first most public housing projects were "separate but equal," but a trend toward open occupancy began during World War II and in 1960 the Public Housing Administration reported that thirty-two states were operating their public housing projects on an "open occupancy" basis. Moreover, 35.4 percent of the Negro tenants lived in "completely integrated"--i.e., white and more than one nonwhite family--projects in 1960 in contrast to 15 percent in 1952.⁴⁴ Since discrimination in housing clearly existed, the national issue was what, if anything, should be done by the national government.

⁴³Ibid., p. 69.

⁴⁴U.S. Housing and Home Finance Agency, Trends Toward Open Occupancy Low-Rent Housing Programs of the Public Housing Administration (1960), as cited in U.S. Commission on Civil Rights, Report, 1961, Bk. 4, p. 111.

Pressures for Presidential Decision

A national nondiscrimination policy in housing could be carried out administratively, and consequently most of the public demand was for executive action. The civil rights groups for the most part wanted to keep the issue out of congressional controversy. The American Jewish Congress, for example, supported a proposal to establish, by executive order, a President's Committee on Housing Discrimination, since this could be done without legislation and "we would not want to be caught in the trap of going back to the Congress of the United States and trying to pass legislation which would follow through on this."⁴⁵

When Roy Wilkins of the NAACP was asked by the Commission on Race and Housing whether he preferred the executive or the legislative approach, he hedged:⁴⁶

Well, . . . it is desirable, of course, that the Federal Government act in whatever way proves to be the most effective, and it could act without legislation if it had a firm and affirmative policy on this in the executive branch and if it would move to execute that policy

⁴⁵U.S. Commission on Civil Rights, Hearings on Housing, 1959, I, 365..

⁴⁶Ibid., p. 337.

Civil rights groups insisted that the housing agencies had ample authority to issue regulations to prevent segregation in housing financed in whole or in part by federal funds.⁴⁷ However, by 1961 the Federal Housing Administration, the Public Housing Administration, and the Urban Renewal Administration had made it clear that further steps to assure equal opportunity to all Americans would await presidential or legislative direction.⁴⁸ For example, William L. Slayton, Urban Renewal Commissioner, said:⁴⁹

The Urban Renewal Administration has no requirements expressly prohibiting racial or other ethnic group discrimination in the sale or rental of property built in urban renewal project areas by private developers. In the absence of a policy directive on this subject from either the Congress or the Executive, the Agency regards antidiscrimination requirements as a matter for local (or State) determination.

The movement for a presidential ban on discrimination in federally aided housing was led by the National Committee Against Discrimination in Housing, organized in 1950

⁴⁷"Statement of Clarence Mitchell, Director of the Washington Bureau, NAACP, Before the [House] Banking and Currency Committee," as reprinted in Cong. Rec., 83d Cong., 2d Sess., 1954, C, 4488.

⁴⁸U.S. Commission on Civil Rights, Report, 1961, Bk. 4, p. 108.

⁴⁹Letter from William L. Slayton, Urban Renewal Commissioner to the Commission, May 18, 1961, reprinted U.S. Civil Rights Commission, Report, 1961, p. 101.

with Robert C. Weaver as Chairman and Charles Abrams as Vice Chairman.⁵⁰ The NCDH was an affiliation of thirty-seven⁵¹ major religious, labor, civil rights, and civic organizations that acted both independently and collectively to secure a fair housing executive order. These included the American Civil Liberties Union, the American Council on Human Rights, the American Friends Service Committee, Americans for Democratic Action, Congress of Racial Equality, National Association for the Advancement of Colored People, and the National Urban League.

On September 27, 1961, the National Committee Against Discrimination in Housing met in Washington, D.C., and opened a full-scale nationwide campaign for an order. The NCDH sent the President a proposed executive order and a legal brief supporting it. NCDH Director Frances Levenson commented later:⁵²

⁵⁰Weaver was later appointed by President Kennedy in 1961 as Housing and Home Finance Administrator and by President Johnson in 1966 as head of the new Department of Housing and Urban Affairs.

⁵¹As of 1963.

⁵²Trends in Housing, VI (September-October, 1952), 4. When President Kennedy did issue Executive Order No. 11063, he acknowledged NCDH's efforts and sent the Committee one of the pens used in signing the Executive Order. Ibid., p. 1.

The months that followed provide a striking example of sustained and united action by a vast number of national and local organizations. For more than two years these groups were faced with keeping the same issue constantly before the public. They had to maintain a balance between putting unrelented pressure on the White House and avoiding antagonizing the President.

Various study committees also recommended presidential action to further open occupancy policies in housing. In 1958 the Commission on Race and Housing, an independent, business-oriented citizens' group formed in 1955 to inquire into the housing problems of minority groups, released the major findings of its three-year study.⁵³ Its first recommendation was for presidential action to end discrimination in government housing activities. The Commission

⁵³Where Shall We Live? The Commission, chaired by Earl B. Schwulst, president of the Bowery Savings Bank of New York, included nineteen business and professional leaders, among them, Gordon W. Allport, professor of psychology, Harvard University; Elliott V. Bell, chairman of the Executive Committee and Director, McGraw-Hill Publishing Company and Editor and Publisher of Business Week; Clark Kerr, President, University of California, Berkeley; and Henry R. Luce, Editor-in-Chief, Time, Life, Fortune, Architectural Forum, House and Home, and Sports Illustrated. Of the Commission's efforts, Jacob K. Javits wrote: "The scope of this study, the irrefutable documentation of the facts, the prestige of the Commission membership, and the forthrightness of the Commission's unanimous conclusions and recommendations all point to the increasing awareness of the basic civil rights problem of discrimination and segregation in housing, and its mounting gravity." Op. cit., p. 138.

recommended that the President establish a committee to eliminate discrimination in federal housing and urban renewal programs;⁵⁴ it was to be modeled after the presidential committee established to carry out policies of equal opportunity in employment and in the armed services.

This report was followed in 1959 by one from the U.S. Commission on Civil Rights. This Commission also recommended that the President issue a housing order.⁵⁵ Then in October, 1961, the Civil Rights Commission released its second major set of housing recommendations, and again urged:⁵⁶

. . . the President [to] issue an Executive order stating the national objective of equal opportunity in housing and specifically directing all Federal agencies concerned with housing and with home mortgage credit to shape their policies and practices to make the maximum contribution to the achievement of this goal.

In its 1961 Report the Commission added that "for full effectiveness an Executive Order should extend to all Federal agencies which supervise the mortgage lending community."⁵⁷

⁵⁴Commission on Race and Housing, op. cit., pp. 63-64.

⁵⁵Report, 1959, p. 534.

⁵⁶Report, 1961, Bk. 4, p. 150.

⁵⁷Ibid., p. 146.

Two of the Commission members, Robert S. Rankin and Robert S. Storey, dissented from this recommendation. Storey, head of Southwestern Legal Center, and former president of the American Bar Association, said:⁵⁸

. . . [I] am very much opposed to further intervention by the Federal Government into the affairs and policies of private financial institutions engaged in a mortgage loan business that are supervised by a Federal agency to conduct such business on a nondiscrimination basis.

In addition to interest groups and both private and governmental study committees, both major parties pledged in 1960 for the first time to take action to prohibit discrimination in federally assisted housing. The Democratic Party platforms in 1952 and 1956 had included a general statement that all citizens should have equal opportunities for decent living conditions, but the 1960 platform included a pledge to take executive action to end discrimination in federal housing programs, including federally assisted housing.

To offset the pressures from civil rights advocates, others (such as representatives of the real estate interests, Southern politicians, and some administrators in

⁵⁸Ibid., pp. 151-153.

the housing agencies) opposed the issuance of a fair housing executive order. Opponents argued that an executive order on discrimination would slow down the construction program and that the South would simply refuse federal aid; thus the minorities would be hurt by an order designed to aid them.

The National Association of Home Builders sent to the President in July, 1962, a study emphasizing that building starts in real estate would be sharply reduced if an executive order were issued. The report indicated a minimum loss of three billion dollars on the gross national product, should racial discrimination in housing be prohibited.⁵⁹ The chairman of both the House and the Senate subcommittees on housing also argued that an executive order would have a bad, if not disastrous, effect on the federal housing program and on the whole housing market as well.⁶⁰

Furthermore, the housing agencies, anxious about the housing programs, expressed anything but enthusiasm about a change in policy. For example, a spokesman for the

⁵⁹ Cong. Rec., 87th Cong., 2d Sess., 1962, CVIII, 20303-20304.

⁶⁰ Senator John Sparkman, Cong. Rec., 86th Cong., 1st Sess., 1959, CV, 19536; Representative Albert Rains, Cong. Rec., 87th Cong., 2d Sess., 1962, CVIII, 22910.

Veterans Administration wrote to the U.S. Commission on Civil Rights:⁶¹

All aspects of the problem must be weighed and balanced. I do not believe anyone would suggest that in order to avoid [discrimination] of one group, all groups should be discriminated against. Then, there is presented the question of the extent to which other veterans would lose the opportunity to participate in the programs because of an interest in avoiding discrimination against one group of veterans.

Congressional Action

Even though most of the pressure was for executive action, civil rights proponents also attempted to get congressional action. Beginning in 1949 members of both parties introduced a continuous flow of bills in one or the other of the houses to end discrimination where federal funds were involved. However, none of these were ever reported from committee. Furthermore, no antidiscrimination amendments to housing bills were reported from committee. As a result, antidiscrimination amendments were offered to housing bills many times from the House and Senate floor. On one occasion, during the Truman administration, a fair

⁶¹Letter from P. N. Brownstein, Chief Benefits Director, to Commission, May 18, 1961, as quoted in Report, 1961, Bk. 4, p. 11.

housing amendment passed the House, but a parliamentary maneuver eliminated it from the final housing bill.⁶²

The first major skirmish was in 1949 when an anti-discrimination amendment was brought to a vote in the Senate for the first time on April 21. Senators John W. Bricker and Harry P. Cain, during consideration of the Housing Act of 1949,⁶³ offered an antisegregation amendment that proponents of public housing charged was designed to defeat the legislation and place the liberals who supported both housing and civil rights in the awkward position of voting against the amendment in order to save the housing bill.⁶⁴

Civil rights groups were mixed in their support for the amendment. The National Council of Negro Women on April 12 issued a statement in opposition to the Bricker amendment, because of the possibility that it might kill

⁶²p. 189, infra.

⁶³63 Stat. 413 (1949).

⁶⁴Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 4797, 4851, 4857, 4858. Senator Glen H. Taylor said: "I want no housing administrator to construe my vote at any time as meaning that I am not in favor of civil rights, and that possibly this vote in the United States Senate might be a mandate or even be construed as an acquiescence in segregation. We simply want a housing bill. We hope the administrators will prevent segregation wherever possible" Ibid., p. 4858.

the housing program.⁶⁵ Similarly, the Chicago Defender, one of the largest Negro newspapers in the country, opposed the amendment in its April 9 issue.⁶⁶ Charles Abrams, Vice Chairman of the NCDH, wrote that the Cain-Bricker amendment, "proffered by the real estate lobby as part of its strategy to alienate southern support from the housing bill,"⁶⁷ if it succeeded, would "become the forerunner of a whole series of efforts to use the civil-rights issue as an instrument for killing off civil reform."⁶⁸

On the other hand, the NAACP not only urged support for the Bricker amendment, but also requested a broader one to cover all federally aided public and private housing.⁶⁹ And the National Negro Council sent a resolution to the Republican and Democratic leadership in the Senate:⁷⁰

⁶⁵Ibid., p. 4853.

⁶⁶Ibid.

⁶⁷Charles Abrams, Forbidden Neighbors: A Study of Prejudice in Housing (New York: Harper & Brothers, 1955), p. 154.

⁶⁸Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 4853.

⁶⁹Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 4854.

⁷⁰Copy of resolution, reprinted in ibid.

. . . in keeping with the civil-rights pledges of both parties in their platforms and in this first opportunity for a direct vote on civil rights for Negroes in the Senate, . . . support the enactment of the Bricker anti-discrimination and antisegregation amendment as part and parcel of the national housing legislation or stand exposed of political insincerity and copartners with the Democrats in perpetuating the present Federal housing policies in racial discrimination and segregation.

The Cain-Bricker amendment was rejected on April 21, 1949, by a 49-31 vote and the same day the housing bill passed the Senate, 57-13.⁷¹ During House consideration of the bill, Representative James G. Fulton and Representative Vito Marcantonio, supported by Adam C. Powell, offered antidiscrimination amendments, both of which were rejected.⁷² Representative Frank Buchanan charged that "this amendment is the favorite secret weapon of the real estate lobby to kill this bill."⁷³ Marcantonio used this argument in reverse and contended that opponents of civil rights had no right to use housing to defeat civil rights.⁷⁴

The only time an antidiscrimination amendment to housing legislation ever passed either house was in August,

⁷¹Ibid., pp. 4860, 4903.

⁷²Ibid., pp. 8554-8555, 8658.

⁷³Ibid., p. 8657.

⁷⁴Ibid., p. 8656.

1949, during House consideration of a bill⁷⁵ to amend the National Housing Act. Representative Marcantonio again offered an amendment to guarantee against discrimination "by segregation or otherwise" in housing. The amendment was approved by a teller vote of 77-57 about two minutes before debate on the bill and all its amendments was to close.⁷⁶ To forestall final action on the bill and in an attempt to eliminate the antidiscrimination amendment, Representative Brent Spence, chairman of the Currency and Banking Committee, moved that the Committee of the Whole rise, and this was agreed to by an 86-83 teller vote.⁷⁷ The following day Spence offered a committee substitute that eliminated the antidiscrimination amendment adopted the previous day, and the amended bill passed.⁷⁸ However, the Senate never took action on the bill.

The following year, during House consideration of the Housing Act of 1950,⁷⁹ Marcantonio again offered an

⁷⁵H.R. 6070.

⁷⁶Cong. Rec., 81st Cong., 1st Sess., 1949, XCV, 4858.

⁷⁷Ibid.

⁷⁸Ibid., p. 12269.

⁷⁹64 Stat. 48 (1950).

antidiscrimination amendment, supported by Powell, but it was rejected March 22, 1950, 139-111.⁸⁰

Another attempt to add an antidiscrimination amendment to housing legislation occurred in 1951 during House consideration of the Defense Housing and Community Facilities and Services Act.⁸¹ Representative Jacob Javits on August 15 offered a nondiscrimination amendment to the community facilities and services title.⁸² The House Committee on Banking and Currency had not discussed this issue, but the Senate Committee on Banking and Currency had reported:⁸³

Your committee expects that in the provision of housing by the Federal Government under this title [Title III] and in the provision, or operation and maintenance, of community facilities and services assisted by this title there shall be equality of treatment of persons of all races, religions, and national origins who are to be served by them.

⁸⁰Cong. Rec., 81st Cong., 2d Sess., 1950, XCVI, 3877.

⁸¹65 Stat. 293 (1951).

⁸²Cong. Rec., 82d Cong., 1st Sess., 1951, XCVII, 10083.

⁸³U.S. Senate Banking and Currency Committee, Defense Housing and Community Facilities and Services Act of 1951: Report to Accompany S. 349, Senate Report 189, 82d Cong., 1st Sess., 1951, p. 41.

Before the Defense Housing Act reached the floor, Congressman Abraham J. Multer consulted FHA and was assured that the agencies involved had issued regulations prohibiting discrimination and that similar regulations would be issued upon enactment of the Defense Housing Act and no amendment was needed.⁸⁴ Accordingly, Multer opposed the Javits amendment with the argument that FHA regulations covered the situation and the amendment was unnecessary and might defeat the bill.⁸⁵ The Javits amendment was rejected on division, 79-57.⁸⁶

When Multer later learned that FHA was not prohibiting discrimination in FHA-aided projects, he wrote President Truman and urged him to issue an executive order prohibiting discrimination under existing housing legislation and that simultaneously with his signing of the Defense Housing Act, he issue an executive order applicable to all titles of that bill.⁸⁷ Charles Murphy and Philleo Nash of

⁸⁴Letter, Abraham J. Multer to Harry S. Truman, August 24, 1951, Nash Files, Harry S. Truman Library.

⁸⁵Cong. Rec., 82d Cong., 1st Sess., 1951, XCVII, 10084.

⁸⁶Ibid.

⁸⁷Letter, Abraham J. Multer to Harry S. Truman, August 24, 1951, Nash Files, Harry S. Truman Library.

the White House staff tried to alleviate the conflict by getting FHA to issue new regulations.⁸⁸ However, FHA refused and Raymond Foley, Housing and Home Finance Administrator, eventually issued a policy statement that the Defense Housing Act would be administered to meet the needs of eligibles of all races.⁸⁹ Foley sent a copy of the statement to Multer, and in an accompanying letter he emphasized that the federal government could and would insure mortgage loans covering residential property that the owners voluntarily and freely chose to operate on a nonsegregated basis, and that the government would seek actively to encourage and assist the development of such housing projects.⁹⁰

The next major skirmish over a nondiscrimination provision occurred during consideration of the Housing Act of 1954.⁹¹ Ten days after a court decision that segregation

⁸⁸Memorandum, Philleo Nash to Donald S. Dawson, June 16, 1952, Nash Files, Harry S. Truman Library.

⁸⁹"Statement of Policy With Respect To Defense Housing and Community Facilities Assisted or Provided by the Housing and Home Finance Agency Under the Defense Housing and Community Facilities and Services Act of 1951," November 15, 1951, Nash Files, Harry S. Truman Library.

⁹⁰Letter, Raymond M. Foley to Abraham J. Multer, November 25, 1951, Nash Files, Harry S. Truman Library.

⁹¹68 Stat. 590 (1954).

in public housing by a municipal ordinance violated the Fourteenth Amendment,⁹² Senator Burnet R. Maybank, Chairman of the Banking and Currency Committee, withdrew his support of public housing and offered an amendment to bar any new public housing construction starts, but this was rejected by voice vote.⁹³ Subsequently Representatives Powell and Javits offered nondiscrimination amendments to the Housing Act of 1954, but both amendments were rejected.⁹⁴ Javits' proposal would have empowered the FHA Commissioner to issue antidiscrimination regulations.⁹⁵

During congressional consideration of the Housing Act of 1959,⁹⁶ Powell offered a nondiscrimination amendment to a substitute bill that came to a vote first, but the amendment was rejected, 138-48.⁹⁷ After the defeat of the

⁹²Housing Authority of City and County of San Francisco v. Mattie Banks, 120 Cal. App. 2d 1,260 P. 2d 668 (1953), cert. denied 347 U.S. 974 (1954).

⁹³Cong. Rec., 83d Cong., 2d Sess., 1954, C, 7618-7619.

⁹⁴Ibid., pp. 4487-4488.

⁹⁵Ibid., p. 4487.

⁹⁶73 Stat. 654.

⁹⁷Cong. Rec., 86th Cong., 1st Sess., 1959, CV, 8654.

substitute bill, Powell did not offer his amendment to the committee bill, as he had promised, because (as the Democrats charged) the Republicans planned to support the amendment in order to defeat the housing legislation.⁹⁸ While the Powell amendment applied to all phases of the bill, Representative John F. Baldwin, during the closing hours of debate on May 21, 1959, offered an amendment to ban racial discrimination only in the selection of occupants of public housing, but it was rejected 205-115.⁹⁹

Thus, by the time Kennedy assumed the presidency, Congress for more than a decade had considered antidiscrimination amendments to housing bills and had rejected them, frequently on the argument that they would defeat housing legislation. This legislative history against incorporating antiracial requirements in housing laws prompted some Congressmen to "have misgivings as to the legal authority of the President to issue an Executive Order on this subject."¹⁰⁰

⁹⁸Ibid., p. 8860.

⁹⁹Ibid., p. 8833.

¹⁰⁰Senator Sparkman, Cong. Rec., 87th Cong., 2d Sess., 1962, CVIII, 22908. See also James E. Palmer, Jr., "An Analysis of the Authority of the President to Issue an Executive Order Concerning Racial Integration in Federal Housing Programs," reprinted in ibid., pp. 22908-22912.

Presidential Action

In August, 1960, presidential candidate John F. Kennedy promised that, if elected, he would issue a fair housing executive order, and he reiterated this pledge several times during the ensuing campaign. Not only did the candidate emphasize that a "stroke of the presidential pen" could end discrimination in federally assisted housing, but he taunted President Eisenhower to issue the order and thereby effect the unanimous recommendation of the Civil Rights Commission in its 1959 Report.¹⁰¹

Since Kennedy had made the decision to issue the executive order during the campaign, after the inauguration the two major questions remaining concerned the timing and the scope of the proposed order. The story of the twenty-two month delay in redeeming the campaign promise reveals Kennedy's attempt to meet the needs and demands of an

¹⁰¹"Statement in Washington, D.C.," August 8; "Statement on Use of Civil Rights Legislation," August 9; "Speech in Los Angeles," September 9; "Speech at National Conference on Constitutional Rights and American Freedom," October 12; "Speech in New York," November 5, all in U.S. Senate Commerce Committee, Subcommittee on Communications, Final Report, Senate Report 994, pt. 1, 87th Cong., 1st Sess., 1961, pp. 12-13, 576, 910, 994, 1011; and ibid., pt. 3, p. 29.

important segment of his constituency¹⁰² and, at the same time, issue the order when it least endangered other matters important to him as President.

One of President Kennedy's first acts was to appoint Dr. Robert C. Weaver, then the Chairman of the National Committee Against Discrimination in Housing and Chairman of the Board of the NAACP, as Housing and Home Finance Administrator. The President delayed the order awaiting the action of Congress on Weaver's nomination.¹⁰³ The appointment was confirmed February 11 and meant that the President had a Housing and Home Finance Administrator who was committed to prohibition of racial discrimination in housing.¹⁰⁴ Then he delayed until Congress acted on his housing bill, which was dependent on Southern sponsorship in both Senate and House and which would be administered

¹⁰²Kennedy received from 68 to 78 percent of the Negro vote, according to Gallup and Harris polls. Had only whites gone to the polls in 1960, Nixon would have taken 52 percent of the vote. Arthur M. Schlesinger, Jr., A Thousand Days: John F. Kennedy in the White House (Boston: Houghton Mifflin Company, 1965), p. 930.

¹⁰³Theodore C. Sorensen, op. cit., p. 480.

¹⁰⁴During the confirmation hearing before the Senate Banking and Currency Committee, Dr. Weaver affirmed his support of an antibias mandate, but asserted action was the President's responsibility. Trends in Housing, VI (September-October, 1962), 4.

by Weaver.¹⁰⁵ The Housing Act of 1961 passed,¹⁰⁶ but the first session of the Eighty-Seventh Congress did not bring to a final vote the President's recommendation (transmitted to Congress in April) for the establishment of a Department of Urban Affairs.¹⁰⁷

The President also decided, according to his Special Counsel, to wait for the housing report, due in the fall of 1961, from the Civil Rights Commission and also for a more carefully drafted executive order.¹⁰⁸ In the meantime, he gave priority to the executive order on employment and to administrative actions on voting, education, and other areas.¹⁰⁹

Arthur M. Schlesinger, Jr., Special Assistant to the President, has written that Kennedy intended to issue the order when Congress adjourned in the fall of 1961.¹¹⁰ There was considerable speculation at that time that an

¹⁰⁵ Sorensen, op. cit., p. 480.

¹⁰⁶ Cong. Rec., 87th Cong., 1st Sess., 1961, CVII, 11961. 75 Stat. 149 (1961).

¹⁰⁷ Ibid., p. 18460.

¹⁰⁸ Sorensen, op. cit., p. 480.

¹⁰⁹ Ibid.

¹¹⁰ Op. cit., p. 939.

order was imminent. On November 27 the New York Times carried a front-page story that the executive order was on the President's desk and that a decision to sign it prior to the opening of Congress was expected momentarily.¹¹¹ Such timing, according to the Times' sources, would provide "moderate" Southern legislators an opportunity to go on record against the order in their home states without jeopardizing key legislation.¹¹² However, the same report added that White House aides, charged with lobbying administration bills through Congress, considered such an order an invitation to Southern retaliation.¹¹³ One suggested alternative was to push ahead with the upgrading of Dr. Weaver's agency into a Cabinet-level Department of Housing and Urban Affairs.

The elevation of the Housing and Home Finance Agency to Cabinet status was an important item in the 1962 legislative program, and the only hope for passage rested with two relatively moderate Alabamians who handled housing legislation in their respective chambers, Senator John Sparkman and Congressman Albert Rains.¹¹⁴ Their support,

¹¹¹The New York Times, November 27, 1961, 1:5.

¹¹²Ibid., 22:3.

¹¹³Ibid.

¹¹⁴Sorenson, op. cit., p. 481.

and that of their Southern colleagues, would not be forthcoming if the fair housing executive order were issued first, and the President, according to Sorenson, believed that the achievement of Weaver's elevation, as well as the substantive values of the bill, to be of sufficient importance to merit another delay.¹¹⁵

Weaver was reported to have said that he preferred the order to the bill, but agreed that if the President's strategy could obtain both, more delay would not be intolerable.¹¹⁶ Then on December 28 newspapers picked up the story that the President had decided to delay the order temporarily.¹¹⁷ When asked about the proposed order at a January 15, 1962, news conference, Kennedy answered:¹¹⁸

I have stated that I would issue the order when I considered it to be in the public interest . . . we are proceeding in a way which will maintain a consensus, and which will advance this cause.

Congress convened on January 10 and the House Rules Committee killed the Urban Affairs bill by a 9-6

¹¹⁵Ibid.

¹¹⁶The New York Times, November 27, 1961, 22:3; Sorenson, op. cit., p. 481.

¹¹⁷The New York Times, December 28, 1961, 17:8.

¹¹⁸Public Papers of the Presidents, 1962, p. 21.

margin.¹¹⁹ Kennedy redrafted the measure as Reorganization Plan No. 1 of 1962 and transmitted it to Congress January 30.¹²⁰ He announced, in answer to a planted news conference question, his intention to name Weaver to the post.¹²¹ This fact was well-known on the Hill, but the President wanted the public to know. However, instead of putting the Republicans on the spot, as intended, the plan hardened the GOP-Dixie coalition's resistance and the reorganization measure was lost.¹²² This approach "was so obvious it made them mad," the President later commented.¹²³

If the President had issued the order immediately after the defeat of the Urban Affairs bill he might have been charged with using the executive order for political retaliation. Also, the rest of the President's program was in trouble.¹²⁴ At a July 5, 1962, news conference, the President answered a question regarding the order: "I will

¹¹⁹Sorensen, op. cit., p. 481.

¹²⁰House Document 320, 87th Cong., 2d Session, 1962.

¹²¹Sorensen, op. cit., p. 481.

¹²²Cong. Rec., 87th Cong., 2d Sess., 1962, CVIII, 2680; Sorensen, op. cit., p. 481.

¹²³Sorensen, op. cit., pp. 481-482.

¹²⁴Ibid., p. 481.

announce it when we think it would be a useful and appropriate time."¹²⁵

Some thought the "appropriate" time might be September. Reports circulated in the fall of 1962 that the President might announce the housing order during the centennial of the Emancipation Proclamation.¹²⁶ However, Congress had not completed action on the trade bill and the foreign aid appropriation bill--both needing Southern votes.¹²⁷

An October 22 front-page story in the New York Times predicted that the order would be issued after election day and before the end of the year, because to issue it before election day might "look like a mere political gesture."¹²⁸ The New York Times also reported that some officials believed the order would do the Administration more harm than good politically, since it might disaffect conservatives, while appealing to voters who were Democrats already.¹²⁹

¹²⁵Public Papers of the Presidents, 1962, p. 544.

¹²⁶The New York Times, September 22, 1962, 12:1.

¹²⁷Ibid., September 18, 1962, 24:5.

¹²⁸Ibid., October 22, 1962, 1:2.

¹²⁹Ibid.

In addition, the President may also have been concerned that the order might slow business recovery that fall by holding back building starts.¹³⁰ The National Association of Home Builders had polled its members regarding their building plans if an executive order were issued and, on this basis, predicted a severe economic decline.¹³¹ Other opponents of a racial ban also urged that a presidential order would have an adverse economic effect and "would serve in a measure to undo a larger part of the great accomplishments that have been made through the many housing measures."¹³² Senator A. Willis Robertson, Chairman of the Senate Banking Committee, warned that the order would curtail housing construction "by anywhere from 25 to 50 percent."¹³³ Residential construction totaled 1.4 million new

¹³⁰Schlesinger suggests that this may have been a concern, op. cit., p. 939. Also, when the President was questioned about the possible economic impact of the order when he issued it, he answered: ". . . there may be some adverse reaction . . .," "News Conference," November 20, 1962, Public Papers of the Presidents, 1962, p. 835.

¹³¹Martin E. Sloane, "One Year's Experience: Current and Potential Impact of the Housing Order," The George Washington Law Review, XXXII (March, 1964), 459.

¹³²Senator John J. Sparkman, Cong. Rec., 87th Cong., 2d Sess., 1962, CVIII, 22908.

¹³³The New York Times, November 21, 1962, 19:1

homes in 1962 and thus provided strong support for business generally.¹³⁴ Finally, the strong federal action required to insure admission of a Negro student to the University of Mississippi ended any possibility for the order before the November elections.¹³⁵

Theodore Sorensen has written that "the President . . . looked for the least divisive approach when he considered civil rights action," and in this instance, Sorensen suggests, the President's desire was to make a low-key announcement.¹³⁶ He found that time on the evening of November 20, the night before the long Thanksgiving weekend. He "unexpectedly" announced it at a 6 P.M. news conference that was dominated by the Cuban crisis.¹³⁷ During the conference only one reporter asked about the Order and that was to learn why it had been delayed so long. The President answered: "I said that I would issue it at the time

¹³⁴U.S. News & World Report, LIII (December 3, 1962), 60.

¹³⁵Sorensen, op. cit., p. 483; Trends in Housing, VI (September-October, 1962), 4.

¹³⁶Op. cit., pp. 480, 482.

¹³⁷The New York Times, November 26, 1962, 24:3.

when I thought it was in the public interest and now is the time."¹³⁸

In addition to timing, the other major decision with regard to the order was its coverage. Exponents of an executive order on housing generally agreed that a meaningful order should include within its scope federally owned housing, public housing, urban renewal, and housing financed with the aid of FHA-insured or VA-guaranteed loans.¹³⁹ Beyond this, however, the coverage was uncertain. At least as late as September 17, 1962, the President was reported to be undecided on this point.¹⁴⁰ The President finally decided not to include conventional loans and mortgages by financial institutions regulated by federal agencies, as recommended by the Civil Rights Commission. Kennedy, according to news reports, was concerned about the impact of home building if almost all avenues to mortgage credit were closed to those rejecting a special contract clause on

¹³⁸"News Conference," November 20, 1962, Public Papers of the Presidents, 1962, pp. 831-832, 835.

¹³⁹Martin E. Sloane and Monroe H. Freedman, "The Executive Order on Housing: The Constitutional Basis For What It Fails To Do," Howard Law Journal, IX (Winter, 1963), 1-19.

¹⁴⁰U.S. News & World Report, LIII (September 17, 1962), 46.

race.¹⁴¹ Some advisers insisted that these lenders be included as a matter of equity and to plug all loopholes.¹⁴² The argument for including conventional financing was that federal deposit insurance of banks and savings and loan associations is, in effect, federal aid to their lending. But some officials concluded that this was a rather tenuous connection that held opportunity for challenge.¹⁴³ Nicholas deB. Katzenbach, Deputy U.S. Attorney General, later told a housing conference that authority to deny membership in the FDIC system to private banks that practice discrimination is less clear than the sanctions provided in the Order and that "with respect to litigation, it is essential that the first cases be strong legally." "Favorable court decisions," he said, "are vitally important to establish precedents for subsequent court action."¹⁴⁴ Furthermore, had federally

¹⁴¹Ibid.; the New York Times, November 21, 1962, 19:3.

¹⁴²The New York Times, November 21, 1962, 19:3.

¹⁴³The New York Times, November 22, 1962, 32:1. However, Nicholas deB. Katzenbach, Deputy U.S. Attorney General, said the decision to exclude conventional loans was a policy decision and not a legal one. National Committee Against Discrimination in Housing, Equal Opportunity in Housing: Challenge To American Communities (1963), p. 7. Hereinafter cited as Report on 1963 Housing Conference.

¹⁴⁴Ibid., p. 7.

insured financial institutions been included, more than 90 percent of housing construction would have been covered,¹⁴⁵ and this would have led, according to Justice Department officials, to "very serious enforcement problems."¹⁴⁶ The Justice Department supported the view that the experience developed in implementing the Order, which covered about 25 percent of all homes built in the United States,¹⁴⁷ could provide guidance for possible future expansion and that this would enable the government to make step-by-step progress in the field.¹⁴⁸ Since one advantage of the executive order as an instrument for policy-making is that it permits experimentation in new programs, the disadvantages of initially covering virtually 90 percent of the housing construction thus outweighed the advantage of closing loopholes.

Another decision with regard to coverage was whether or not to make the order retroactive. The Administration was reported to consider it unfair to reopen contracts signed in good faith, the inclination being to let

¹⁴⁵The New York Times, October 22, 1962, 18:6.

¹⁴⁶Ibid., November 21, 1962; 19:3.

¹⁴⁷Trends in Housing, VI (September-October, 1962),

3.

¹⁴⁸Katzenbach, Report on 1963 Housing Conference, p. 7.

the courts sort out any individual rights under old contracts.¹⁴⁹ The President decided that the order would apply to future housing to be constructed under federal aid agreements executed after the order's effective date. Thus, existing housing that previously received federal assistance, housing that was still receiving federal assistance, and even housing that had not yet been built were unaffected if the assistance agreement was entered into before November 20, 1962, the effective date of Executive Order No. 11063.¹⁵⁰ Such housing was covered to the extent that the President directed the housing agencies to use their "good offices" and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices in housing previously provided with federal financial assistance.

Reaction to the Order was mixed. Although it was not as broad in coverage as many civil rights leaders had hoped, the National Committee Against Discrimination in Housing considered its issuance a "qualified victory."¹⁵¹

¹⁴⁹U.S. News & World Report, LIII (September 17, 1962), 46.

¹⁵⁰Consult Sloane, loc. cit., passim.

¹⁵¹Trends in Housing, VI (September-October, 1962),

The NCDH did not expect revolutionary changes, but they did anticipate the gradual opening of housing opportunities as a result of the Order:¹⁵²

The consensus is that its moral impact will be one of the most important effects of the Order--an impact which ultimately can have far-reaching influence on the housing market and the structure of America.

Some critics of the Order insisted that it was too limited in scope and too late.¹⁵³ For example, civil rights advocates conducted a "March on Washington for Jobs and Freedom" on August 28, 1963, and one of the demonstration's ten demands was a new executive order banning discrimination in all housing supported by federal funds.¹⁵⁴

¹⁵²Ibid.

¹⁵³See Trends in Housing, VI (September-October, 1962), 3. Loren Miller, NCDH Vice President: "... the Order's very lateness reduces its effectiveness. Had precisely the same order been issued in the 1930's or the 1940's--perhaps even in the early 1950's--it would have had a tremendous impact on the housing market, vast new peripheral urban areas would not have been summarily closed to Negro occupancy. And while it would not have entirely prevented, it would have substantially curtailed the mushroom growth of the all-white developments that ring our cities." Report on 1963 Housing Conference, p. 30.

¹⁵⁴Congressional Quarterly Weekly Report, XXI (August 30, 1963), 1496. President Kennedy, when questioned at a news conference September 12 about consistent reports that he was considering a more sweeping executive order dealing with an end to discrimination in housing, answered: "No, the order we now have is the one we plan to stand on." Public Papers of the Presidents, 1963, p. 674.

Other critics said the Order was undesirable and harmful to the economy.¹⁵⁵ Some Southern Senators announced that they would endeavor to have the Executive Order reversed by statute on the grounds that it represented "an audacious usurpation of power" reserved to Congress by the Constitution.¹⁵⁶ The argument regarding legality of the Order was based on the constitutional grant to Congress of the power to appropriate funds, and implicitly, therefore, according to the opponents, to fix the conditions of their use.¹⁵⁷ However, Kennedy issued the Order on the basis that the President, in faithfully executing the laws of the United States that authorize federal financial assistance for housing, "is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin."¹⁵⁸

¹⁵⁵ Senator Herman Talmadge, Trends in Housing, VI (September-October, 1962), 3; National Association of Home Builders, ibid.; Senator A. Willis Robertson, the New York Times, November 21, 1962, 19:2.

¹⁵⁶ Senator John Stennis, the New York Times, November 21, 1962, 19:2.

¹⁵⁷ Consult Arthur Krock's column in the New York Times, November 23, 1962, 28:3.

¹⁵⁸ Preamble, Executive Order No. 11063, November 20, 1962, 27 Fed. Reg. 11527.

Despite the protest over the Order's legality, when on January 24, 1963, Representative George Huddleston introduced a bill to repeal Executive Order No. 11063, the bill was referred to the Committee on Banking and Currency and no further action was taken.

Another objection to the legal measures taken to assure equality of housing opportunity was the interference with individual property rights.¹⁵⁹ For example, the National Association of Real Estate Boards, at the 1963 annual meeting of the Board of Directors, adopted a "Property Owner's Bill of Rights," that included "the right to occupy and dispose of property without governmental interference in accordance with the dictates of his conscience."¹⁶⁰ Of course, much of the impact of the new policy upon the individual homeowner would depend upon the implementation of the Order.

¹⁵⁹ See Charles J. Bloch, "Property Rights--Are There Any?" North Carolina Law Review, XLII (1963), 136-153; Milton P. Semer and Martin E. Sloane, "Equal Housing Opportunity and Individual Property Rights," The Federal Bar Journal, XXIV (Winter, 1964), 47-75.

¹⁶⁰ News Service Release No. 54, published by the National Association of Real Estate Boards, Washington, D.C., June 6, 1963, as quoted in Semer and Sloane, loc. cit., p. 48.

Implementation

Executive Order No. 11063, which appears as Appendix VIII, placed primary responsibility for obtaining compliance with the nondiscrimination policy in housing on the various executive agencies that administered housing programs. The agencies were instructed to issue regulations, adopt policies and procedures, and enforce nondiscrimination--first through conciliation, and then through the imposition of sanctions. The sanctions included cancellation of the contract for federal aid, barring the violator from further aid, and refusing to approve a lending institution as a beneficiary under any program. As mentioned in Chapter III, the imposition of an economic sanction to effect a social policy was a major departure from previous governmental practice. Agencies were also authorized to refer violations to the Attorney General for appropriate civil or criminal action under existing laws. The Order established the President's Committee on Equal Opportunity in Housing to coordinate federal activities under the Order, to examine all agency rules, to make recommendations, to report to the President, and to encourage educational programs by private groups.

The FHA and VA, which together guarantee about 25 percent of mortgages on new homes, on November 28, 1962, issued regulations pursuant to the Executive Order, and these exempted one and two-family, owner-occupied housing from the antidiscrimination pledge.¹⁶¹ This ruling followed the precedent set by state and local fair housing laws to avoid complications in enforcement.¹⁶² Policing individual deals, according to officials, is extremely difficult and creates red tape.¹⁶³

On January 11, 1962, the President appointed David L. Lawrence, former Governor of Pennsylvania, as chairman of the Committee, but weeks passed without the appointment of the public members. Impatient at the delay, the National Committee Against Discrimination in Housing held a press conference in Washington April 26, 1962, and released a statement that attacked the slow progress in implementing the Executive Order.¹⁶⁴ The statement listed

¹⁶¹24 CFR 200.315 (b) (Supp. 1964).

¹⁶²Robert C. Weaver, Report on 1963 Housing Conference, p. 8.

¹⁶³The New York Times, November 22, 1962, 32:1.

¹⁶⁴Text reprinted in Report on 1963 Housing Conference, pp. 1-3. Those joining in the statement were

four "critical deficiencies" in the implementation of the housing mandate:

1. Delay in formal organization of the committee;
2. No public or internal information program under-way;
3. No indication of serious exploration of ways to effectively use the "good offices" section;
4. Underutilization of the intergroup relations service by the housing agencies.

The civil rights spokesmen concluded that "neither the broad spirit nor the limited letter of the Order is being made a reality."¹⁸⁵

Three weeks later, on May 16, the President appointed the eight public members. Chairman Lawrence explained that the delay in formal organization of the committee was due to the fact that security checks of presidential appointees take as long as two or three months.¹⁸⁶

No statistics are available to indicate the number of nonwhite families who moved into housing that was opened

Algeron D. Black, NCDH Board Chairman; James Farmer, National Director, Congress of Racial Equality; Roy Wilkins, Executive Secretary, NAACP; and Whitney Young, Jr., Executive Director, National Urban League.

¹⁸⁵Ibid.

¹⁸⁶Ibid., p. 6.

to them because of the Order.¹⁶⁷ However, Housing Administrator Weaver stated in 1963 that it was apparent that no major changes in this regard had occurred.¹⁶⁸ Nevertheless, the housing agencies at least showed an intention to apply the sanctions in implementing the Order. The Veterans Administration stopped doing business with a Chicago real estate broker in April, 1963, and a Florida builder in July, 1963, because of their discriminatory practices.¹⁶⁹

The Executive Order was in effect only one year under President Kennedy. Therefore, conclusions will not be attempted with regard to its effect on housing opportunities for minorities.

Subsequent Action

In 1964 Congress passed legislation that in effect validated Executive Order No. 11063. Having decided as a candidate on a strategy of executive action in the field of

¹⁶⁷Sloane, loc. cit., p. 466.

¹⁶⁸U.S. Housing and Home Finance Agency, Press Release No. 63-318, December 13, 1963, as cited in ibid.

¹⁶⁹U.S. Commission on Civil Rights, Report, 1963, p. 99, n. 10.

civil rights,¹⁷⁰ when he was a candidate for office, President Kennedy sought no major civil rights legislation for two years. In the Spring of 1963 the President decided that public interest in civil rights legislation had made congressional passage at least possible. On June 19 he sent to Congress proposals that expanded the pattern his executive actions had started and that differed only slightly from the Civil Rights Act enacted by the Congress the following year. The President, at the suggestion of congressional leaders, added a broad authorization to withhold federal funds from any program or effort that practiced racial discrimination, in order to prevent certain congressmen from offering nondiscrimination amendments to programs they hoped to defeat.¹⁷¹ The President requested:¹⁷²

¹⁷⁰" . . . the greater opportunity [with regard to civil rights] lies in the executive branch without Congressional action." "Remarks of Senator John F. Kennedy," Bean Feed, Minneapolis, Minnesota, October 1, 1960, U.S. Senate Commerce Committee, Subcommittee on Communications, Final Report, Senate Report 994, 87th Cong., 1st Sess., 1961, pt. 1, p. 452.

¹⁷¹Sorensen, op. cit., p. 497.

¹⁷²"Special Message to the Congress on Civil Rights and Job Opportunities," June 19, 1962, Public Papers of the Presidents, 1963, p. 492.

Simple justice requires that public funds, to which all taxpayers of all races contribute not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local government is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious . . . Congress and the Executive have their responsibilities to uphold the Constitution also

Instead of permitting this issue to become a political device often exploited by those opposed to social or economic progress, it would be better at this time to pass a single comprehensive provision making it clear that the Federal Government is not required, under any statute, to furnish any kind of financial assistance--by way of grant, loan, contract, guaranty, insurance or otherwise--to any program or activity in which racial discrimination occurs.

Title VI of the Civil Rights Act of 1964¹⁷³ prohibited discrimination in federally assisted programs or activities. However, the title excluded programs involving "a contract of insurance or guaranty." Therefore, Executive Order No. 11063 continued to apply to the FHA mortgage insurance programs and VA-guaranteed loans.

Conclusion.

After his nomination, presidential-candidate John F. Kennedy decided to utilize executive resources as

¹⁷³78 Stat. 241 (1964).

the best immediate hope for civil rights progress. This approach fitted his conception of an activist president,¹⁷⁴ and furthermore the 1957 and 1960 civil rights debates had left him pessimistic about further progress in Congress.¹⁷⁵

The controversy over the housing program largely eliminated any prospect of Congress adding a nondiscrimination provision to housing bills. Consequently, most of the pressure for national action to prohibit discrimination in housing was on the executive branch.

As a candidate, Kennedy not only promised executive action regarding civil rights, but he pledged to issue an executive order banning discrimination in federally assisted housing. Having already selected the alternative of the executive order as the instrument for ending discrimination in housing, Kennedy's remaining decisions as President were those of timing and content. Unlike Presidents Truman and Eisenhower, he was not handicapped by administrative reluctance, since he appointed a Housing and Home Finance Administrator who was committed to an open-occupancy

¹⁷⁴See "Candidate John Kennedy Discusses the Presidency," as reprinted in Johnson and Walker, op. cit., pp. 139-141.

¹⁷⁵Schlesinger, op. cit., p. 928.

policy. However, despite the campaign promise and growing criticism from civil rights advocates, the order was not issued during the first twenty-two months of his administration. Political strategy played the controlling part in this delay. Advised that the order was not likely to attract many new voters, the President waited to issue it until he thought it was least likely to jeopardize his other programs in Congress.

In spite of previous refusals to add nondiscrimination provisions to housing bills, Congress tacitly approved the President's action by failing to pass conflicting legislation. Furthermore, Congress in effect validated the Executive Order, for the most part, by passing Title VI to the Civil Rights Act of 1964.

The period of time during which the Order was in effect prior to President Kennedy's death is too short for determining its impact on housing opportunities for minorities. Nevertheless, even its critics consider it to be a major new policy.

On the basis of this evidence, the conclusion seems warranted that the President uses the executive order to make public policy in the absence of congressional action and as an alternative to advocating legislation when the

policy goal can be attained administratively and congressional action seems unlikely. Furthermore, the order may be politically timed to avoid controversy and to avoid jeopardizing other presidential programs in Congress.

CHAPTER VI

CONCLUSIONS

This analysis of eight selected executive orders confirms the hypothesis that the President, under the prerogative of his office, makes significant public policy by using the executive order.

One of the various standards for judging a policy is the importance of its subject. Racial discrimination in military service, in employment, and in housing were matters of national interest during the years 1945-1963. Interest groups were active,¹ and some (such as the Commission on Race and Housing), as well as a number of government committees (such as the President's Committee on Civil Rights), made special studies of one or more of these three issues. Also, the political parties' platforms incorporated promises regarding them, and members of both major

¹In addition to interest groups such as the National Association for the Advancement of Colored People, ad hoc committees were formed in all three areas to secure governmental action: the Committee Against Jim Crow in the Military Service and Training, the National Council for a Permanent FEPC, and the National Committee Against Discrimination in Housing.

parties introduced bills or amendments about them in every congressional session.

In addition, if policy is to be most effective, it must be successfully implemented. Military desegregation was indeed achieved. The goals of fair employment and fair housing practices were not fully accomplished during the span of this study; however, the executive orders involving them did lay the groundwork for subsequent legislation. Thus, the Equal Employment Opportunity Commission, created by the Civil Rights Act of 1964, benefited from the many previous studies by presidential committees and, also, from the government employees experienced in coping with the problems of minority employment.

The interest groups involved were at least partially satisfied with the policies promulgated by the executive orders. No organized opposition to any of the programs developed. To the contrary, the protest about armed forces segregation ceased. The interest groups concerned with fair employment practices and with open occupancy in housing expressed, if not complete satisfaction, at least qualified approval of the orders and the programs established under them.

None of the eight executive orders studied has been challenged in the courts. Their constitutionality

may thus be temporarily assumed, but nonetheless questioned. The authority of the President, as Chief Executive and as Commander in Chief, to issue the orders banning discriminatory practices in government employment and in the armed forces is constitutionally clear. However, the President's authority to prohibit discriminatory practices in private enterprise operating under government contract and in federally aided housing is less clear. In these instances the President, under his interpretation of his responsibility "to faithfully execute the laws," established nondiscrimination requirements for receiving funds that had been appropriated by Congress. The fact that Congress had refused to pass legislation on these two subjects raises the question as to whether or not it was proper for the President, under his implied constitutional authority, to have adopted such policies. The Supreme Court in the Steel Seizure case in which it declared unconstitutional a presidential executive order relied heavily on the point of congressional intent. However, in this instance Congress had provided alternate means for dealing with the type of emergency that the President met by issuing one. This was not the case with regard to employment and housing discrimination. Congress had rejected legislation, but rejection is not necessarily equivalent to enactment of legislation of a different nature.

Furthermore, in areas in which the President does not have exclusive constitutional power, executive orders are subordinate to statutory law, and Congress has the option of superseding them. In such instances, an executive order is just as dependent upon congressional-presidential cooperation as the enactment of legislation is.

The issuance of a policy-making executive order is not an usurpation of power. Rather, its issuance is confined to an area bounded by the judgment of the President and the support of a segment of the American public, and its use may be restricted by congressional or Supreme Court disapproval.

What conditions prompt a President to promulgate significant policy-making executive orders? One factor influencing his decision to act is the identification of a problem requiring national governmental action for its solution. For example, in the complex field of civil rights, government committees and interest groups called the President's attention to the possibility of the national government's alleviating some racial discrimination by his prohibiting the use of federal funds for housing restricted to white occupants.

A demand for a solution to a national problem is also a factor prompting Presidents to act. Thus, the

National Council for a Permanent FEPC, an affiliation of more than seventy major religious, labor, civil rights, and civic organizations, exerted pressure on the President and on Congress for two decades to secure a national ban on discriminatory employment practices.

A third factor influencing a President's decision to act is his personal values. For example, Presidents Truman, Eisenhower, and Kennedy all favored equal treatment and opportunity for minorities, and therefore, they were more willing to adopt specific policies than they would have been, had they opposed an expansion of civil rights.

In addition, the unwillingness or inability of a program's administrators to put a policy into effect prompts presidential action. With regard to housing, the few antidiscrimination rules and regulations adopted by the housing agencies had little effect. Furthermore, without a presidential or congressional directive, some administrators showed a reluctance to interfere with the local control of occupancy patterns.

A fifth major factor prompting a presidential decision to act is congressional failure to enact legislation. This is clearly seen in the history of fair employment practices. For a period of more than two decades,

Congress refused to legislate about discrimination in employment, even though members of both political parties introduced a continuous flow of bills in both houses.

Finally, political party advantage is a consideration when a President does decide to act. This was the controlling factor in President Truman's decision to prohibit segregation in the armed forces. To gain the Negro vote in the 1948 election, he issued the military desegregation order after the Democratic national convention had adopted strong civil rights platform provisions.

When the President decides to act, his major alternatives are the formal executive order and the recommendation of legislation to Congress. The choice between these hinges on the relative importance of his various goals, the degree to which his program can be implemented administratively, the chance for enactment of legislation, and the effect presidential pressure will have on other executive programs being considered by Congress. For example, legislation was not necessary to establish a non-discrimination policy in federally aided housing. Consequently, none of the Presidents risked endangering housing legislation, also a matter of high priority, by pushing for statutory nondiscrimination provisions. Furthermore, a

pessimistic view regarding the chances for any civil rights legislation and concern over congressional reprisal on other executive programs prompted President Kennedy, despite campaign promises, to drop civil rights recommendations from his legislative program for two and one-half years after his inauguration.

If the President decides to act, he may request legislation and then issue an executive order if Congress does not respond with a law, as President Truman did with regard to fair employment practices. On the other hand, the President may issue an executive order rather than request legislation that may involve the proposed policy in a congressional controversy, as Truman did with regard to desegregation of the armed services. If a politically important segment of the American public is demanding legislation, and if the President considers the risk of congressional defeat or reprisal to be too great, he may issue an executive order rather than use his leadership to secure congressional action. President Kennedy's use of the order to establish the Committee on Equal Employment Opportunity illustrates this point.

A President does not attempt to publicize an executive order if he thinks it expedient to avoid controversy that might create public resistance or congressional

reprisal against other programs. This was clearly the case when President Kennedy issued the fair housing order. On the other hand, if political party advantage is the controlling factor in issuing the order, then the President announces it at a time and in a manner to attract attention, as President Truman did with the military desegregation order.

The future of the presidential executive order as an instrument for policy-making lies in its increased use as a tool for solving complex policy problems. The executive order provides a more flexible, adaptive framework than the relatively permanent molds of statutes. This is made clear by the six successive executive orders that broadened and strengthened the national government's program of fair employment practices. The executive order, therefore, has the potential for being an important tool in finding solutions to complex policy problems.

In addition, the executive order enables the President to move in advance of Congress in order to establish national policies when popular demands are thwarted by one or more legislators using obstructive congressional procedures or parliamentary tactics. For example, filibusters and the failure of cloture attempts prevented a vote

ever being taken on a fair employment practices bill in the Senate. In the House, the Rules Committee never approved such a bill for floor debate. While proponents of a bill must overcome a certain amount of inertia in Congress, the President by using the executive order can adapt policy as fast as political circumstances with regard to a controversial issue permit.

Policies established by executive orders issued under presidential prerogative, which is derived directly from the Constitution, enable the President to control the use of funds appropriated by Congress in a way that may modify congressional intent. Since some of these funds may be distributed to state and local governments under conditions in part determined directly by a President's prerogative power, such use of the executive order may provide an additional avenue for control of state and local administrative policy--and without direct congressional assent.

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APPENDIX I

EXECUTIVE ORDER 9981

ESTABLISHING THE PRESIDENT'S COMMITTEE ON EQUALITY OF TREATMENT AND OPPORTUNITY IN THE ARMED SERVICES

WHEREAS it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all those who serve in our country's defense:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, by the Constitution and the statutes of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.

2. There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which shall be composed of seven members to be designated by the President.

3. The Committee is authorized on behalf of the President to examine into the rules, procedures and practices of the armed services in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out the policy of this order. The Committee shall confer and advise with the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and shall make such recommendations to the President and to said Secretaries as in the judgment of the Committee will effectuate the policy hereof.

4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee in its work, and to furnish the Committee such information or the services of such persons as the Committee may require in the performance of its duties.

5. When requested by the Committee to do so, persons in the armed services or in any of the executive departments and agencies of the Federal Government shall testify before the Committee and shall make available for the use of the Committee such documents and other information as the Committee may require.

6. The Committee shall continue to exist until such time as the President shall terminate its existence by Executive order.

HARRY S. TRUMAN

THE WHITE HOUSE,

July 26, 1948.

APPENDIX II

EXECUTIVE ORDER 9980

REGULATIONS GOVERNING FAIR EMPLOYMENT PRACTICES WITHIN THE FEDERAL ESTABLISHMENT

WHEREAS the principles on which our Government is based require a policy of fair employment throughout the Federal establishment, without discrimination because of race, color, religion, or national origin; and

WHEREAS it is desirable and in the public interest that all steps be taken necessary to insure that this long-established policy shall be more effectively carried out:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, by the Constitution and the laws of the United States, it is hereby ordered as follows:

1. All personnel actions taken by Federal appointing officers shall be based solely on merit and fitness; and such officers are authorized and directed to take appropriate steps to insure that in all such actions

there shall be no discrimination because of race, color, religion, or national origin.

2. The head of each department in the executive branch of the Government shall be personally responsible for an effective program to insure that fair employment policies are fully observed in all personnel actions within his department.

3. The head of each department shall designate an official thereof as Fair Employment Officer. Such Officer shall be given full operating responsibility, under the immediate supervision of the department head, for carrying out the fair-employment policy herein stated. Notice of the appointment of such Officer shall be given to all officers and employees of the department. The Fair Employment Officer shall, among other things--

(a) Appraise the personnel actions of the department at regular intervals to determine their conformity to the fair-employment policy expressed in this order.

(b) Receive complaints or appeals concerning personnel actions taken in the department on grounds of alleged discrimination because of race, color, religion, or national origin.

(c) Appoint such central or regional deputies, committees, or hearing boards, from among the officers or employees of the department, as he may find necessary or desirable on a temporary or permanent basis to investigate, or to receive, complaints of discrimination.

(d) Take necessary corrective or disciplinary action, in consultation with, or on the basis of delegated authority from, the head of the department.

4. The findings or action of the Fair Employment Officer shall be subject to direct appeal to the head of the department. The decision of the head of the department on such appeal shall be subject to appeal to the Fair Employment Board of the Civil Service Commission, hereinafter provided for.

5. There shall be established in the Civil Service Commission a Fair Employment Board (hereinafter referred to as the Board) of not less than seven persons, the members of which shall be officers or employees of the Commission. The Board shall--

(a) Have authority to review decisions made by the head of any department which are appealed pursuant to the provisions of this order, or referred to the Board by the head of the department for advice, and to

make recommendations to such head. In any instance in which the recommendation of the Board is not promptly and fully carried out the case shall be reported by the Board to the President, for such action as he finds necessary.

(b) Make rules and regulations, in consultation with the Civil Service Commission, deemed necessary to carry out the Board's duties and responsibilities under this order.

(c) Advise all departments on problems and policies relating to fair employment.

(d) Disseminate information pertinent to fair-employment programs.

(e) Coordinate the fair-employment policies and procedures of the several departments.

(f) Make reports and submit recommendations to the Civil Service Commission for transmittal to the President from time to time, as may be necessary to the maintenance of the fair-employment program.

6. All departments are directed to furnish to the Board all information needed for the review of personnel actions or for the compilation of reports.

7. The term "department" as used herein shall refer to all departments and agencies of the executive

branch of the Government, including the Civil Service Commission. The term "personnel action," as used herein, shall include failure to act. Persons failing of appointment who allege a grievance relating to discrimination shall be entitled to the remedies herein provided.

8. The means of relief provided by this order shall be supplemental to those provided by existing statutes, Executive orders, and regulations. The Civil Service Commission shall have authority, in consultation with the Board, to make such additional regulations, and to amend existing regulations, in such manner as may be found necessary or desirable to carry out the purposes of this order.

HARRY S. TRUMAN

THE WHITE HOUSE,

July 26, 1948.

APPENDIX III

EXECUTIVE ORDER 10479

ESTABLISHING THE GOVERNMENT CONTRACT COMMITTEE

WHEREAS it is in the interest of the Nation's economy and security to promote the fullest utilization of all available manpower; and

WHEREAS it is the policy of the United States Government to promote equal employment opportunity for all qualified persons employed or seeking employment on government contracts because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds; and

WHEREAS it is the obligation of the contracting agencies of the United States Government and government contractors to insure compliance with, and successful execution of, the equal employment opportunity program of the United States Government; and

WHEREAS existing Executive orders require the government contracting agencies to include in their contracts a provision obligating the government contractor

not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin and obligating the government contractor to include a similar provision in all subcontracts; and

WHEREAS a review and analysis of existing practices and procedures of government contracting agencies show that the practices and procedures relating to compliance with the nondiscrimination provisions must be revised and strengthened to eliminate discrimination in all aspects of employment:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and pursuant to the authority conferred by and subject to the provisions of section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691), it is ordered as follows:

SECTION 1. The head of each contracting agency of the Government of the United States shall be primarily responsible for obtaining compliance by any contractor or subcontractor with the said nondiscrimination provisions of any contract entered into, amended, or modified by his agency and of any subcontract thereunder, and shall take appropriate measures to bring about the said compliance.

SECTION 2. The head of each contracting agency shall take appropriate measures, including but not limited to the establishment of compliance procedures, to carry out the responsibility set forth in section 1 hereof.

SECTION 3. There is hereby established the Government Contract Committee, hereinafter referred to as the Committee. The Committee shall be composed of fourteen members as follows:

(a) One representative of the following-named agencies to be designated by the respective heads of such agencies: the Atomic Energy Commission, the Department of Commerce, the Department of Defense, the Department of Justice, the Department of Labor, and the General Services Administration.

(b) Eight other members to be appointed by the President. The Chairman and Vice Chairman shall be designated by the President.

SECTION 4. The Committee shall make recommendations to the contracting agencies for improving and making more effective the nondiscrimination provisions of government contracts. All contracting agencies of the Government are directed and authorized to cooperate with the Committee and, to the extent permitted by law, to

furnish the Committee such information and assistance as it may require in the performance of its functions under this order, and shall make annual or semiannual reports on its progress to the President.

SECTION 5. The Committee may receive complaints of alleged violations of the nondiscrimination provisions of government contracts. Complaints received shall be transmitted by the Committee to the appropriate contracting agencies to be processed in accordance with the agencies' procedure for handling such complaints. Each contracting agency shall report to the Committee the action taken with respect to all complaints received by the agency, including those transmitted by the Committee. The Committee shall review and analyze the reports submitted to it by the contracting agencies.

SECTION 6. The Committee shall encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other voluntary non-governmental groups in order to eliminate or reduce the basic causes and costs of discrimination in employment.

SECTION 7. The Committee is authorized to establish and maintain cooperative relationships with agencies of state and local governments, as well as with

non-governmental bodies, to assist in achieving the purposes of this order.

SECTION 8. The government agencies (except the Department of Justice) designated in section 3 (a) of this order shall defray such necessary expenses of the Committee as may be authorized by law, including section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691); provided that no agency shall supply more than 50% of the funds necessary to carry out the purposes of this order. The Department of Labor shall provide necessary space and facilities for the Committee. In the case of the Department of Justice the contribution shall be limited to the rendering of legal services.

SECTION 9. Executive Order No. 10308 of December 5, 1951 (16 F.R. 12303) is hereby revoked and the Committee on Government Contract Compliance established thereby is abolished. All records and property of the said Committee are transferred to the Government Contract Committee. The latter Committee shall wind up any outstanding affairs of the abolished Committee.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

August 13, 1953.

APPENDIX IV

EXECUTIVE ORDER 10557

APPROVING THE REVISED PROVISION IN GOVERNMENT CONTRACTS RELATING TO NONDISCRIMINATION IN EMPLOYMENT

WHEREAS the contracting agencies of the United States Government are required by existing Executive orders to include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and obligating the contractor to include a similar clause in all sub-contracts, and

WHEREAS the Committee on Government Contracts is authorized by Executive Order 10479, as amended, to make recommendations to the contracting agencies for improving and making more effective the nondiscrimination provision of Government contracts, and

WHEREAS the Committee on Government Contracts, in consultation with the principal contracting agencies of the Government, has recommended that in the future the contracting agencies of the Government include in place

of, and as a means of better explaining, the present nondiscrimination provision of Government contracts, the following provision:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and in order to clarify the provisions of the existing orders, it is ordered as follows:

SECTION 1. The contract provision relating to nondiscrimination in employment, recommended by the Committee on Government Contracts, is hereby approved.

SECTION 2. The contracting agencies of the Government shall hereafter include the approved nondiscrimination provision in all contracts executed by them on and after a date 90 days subsequent to the date of this order, except:

(a) Contracts and subcontracts to be performed outside the United States where no recruitment of workers within the limits of the United States is involved; and

(b) Contracts and subcontracts to meet other special requirements or emergencies, if recommended by the Committee on Government Contracts.

SECTION 3. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

September 3, 1954.

APPENDIX V

EXECUTIVE ORDER 10590

ESTABLISHING THE PRESIDENT'S COMMITTEE ON GOVERNMENT EMPLOYMENT POLICY

WHEREAS it is the policy of the United States Government that equal opportunity be afforded all qualified persons, consistent with law, for employment in the Federal Government; and

WHEREAS this policy necessarily excludes and prohibits discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin; and

WHEREAS it is essential to the effective application of this policy in all civilian personnel matters that all departments and agencies of the executive branch of the Government adhere to this policy in a fair, objective, and uniform manner:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and consistent with the provisions of section 214 of the act of May 3, 1945, 59 Stat. 134

(31 U.S.C. 691), it is hereby ordered as follows:

SECTION 1. There is hereby established the President's Committee on Government Employment Policy (hereinafter referred to as the Committee). The Committee shall be composed of five members, as follows: (a) One representative of the Civil Service Commission, to be designated by the Chairman thereof, (b) one representative of the Department of Labor to be designated by the Secretary of Labor, (c) one representative of the Office of Defense Mobilization, to be designated by the Director thereof, and (d) two public members to be appointed by the President. Not more than two alternate public members may be appointed by the President as he may deem necessary. Three members of the Committee shall constitute a quorum, provided that at least one public member or alternate public member is present. The President shall designate the Chairman and the Vice-Chairman of the Committee, and each member of the Committee shall serve at the pleasure of the President.

SECTION 2. The Committee shall:

(a) Advise the President periodically as to whether the civilian employment practices in the Federal Government are in conformity with the non-discriminatory

employment policy recited in the preamble of this order, and, whenever deemed necessary or desirable, recommend methods of assuring uniformity in such practices;

(b) At the request of the head of a department or agency, or the Employment Policy Officer thereof, consult with and advise them concerning non-discriminatory employment policies under this order and regulations of such department or agency relating to such policies;

(c) Consult with and advise the Civil Service Commission with respect to civil-service regulations relating to non-discriminatory practices under this order;

(d) Review cases referred to it under the provisions of this order and render advisory opinions on the disposition of such cases to the heads of the departments or agencies concerned;

(e) Make such inquiries and investigations as may be necessary to carry out its responsibilities under this section.

SECTION 3. The head of each executive department and agency shall be responsible for the effectuation of the policy of this order with respect to all civilian personnel matters under his authority and shall:

(a) Prescribe regulations for the administration of the employment policies under this order that will insure a complainant of an appeal to the proper authorities within his department or agency, a fair hearing, and a just disposition of his case. The regulations shall in all cases provide that subsequent to the recommendations of the Employment Policy Officer, as provided in section 6 (b) of this order, and prior to the final decision of the department or agency, and upon the written request of the complainant, the complainant's case shall be referred to the Committee for its review and an advisory opinion as provided under section 2 (d) of this order.

(b) File with the Committee a copy of the regulations prescribed for his agency pursuant to subsection (a) of this section, and report to the Committee all instances in which complaints are made regarding the actions of the department under the policy of this order, together with a statement of the disposition made of the complaint.

SECTION 4. The head of each executive department and agency, or his designated representative, may refer any case coming within the purview of this order

to the Committee for review and an advisory opinion whenever he deems necessary.

SECTION 5. The head of each executive department and agency shall designate an official of his department or agency as Employment Policy Officer, and shall designate such Deputy Employment Policy Officer as may be necessary to assist the Employment Policy Officer to effectively carry out the policy of this order. The position of Employment Policy Officer shall be established outside of the division handling the personnel matters of the department or agency concerned. Each Employment Policy Officer shall be under the immediate supervision of the head of his department or agency, and shall be given the authority necessary to enable him to carry out his responsibilities under this order. All officials and employees of each department and agency shall be advised of the name of its Employment Policy Officer.

SECTION 6. Each Employment Policy Officer shall:

(a) Advise the head of his department or agency with respect to the preparation of regulations, reports, and other matters pertaining to the policy of this order and the conformity therewith of the conduct of personnel matters in his department or agency;

(b) Receive and investigate complaints of alleged discrimination in personnel matters within his department or agency and make recommendations to appropriate administrative officials for such corrective measures as he may deem necessary;

(c) Appraise the personnel operations of the department or agency at regular intervals to assure their continuing conformity to the policy expressed in this order.

SECTION 7. The Civil Service Commission shall in connection with its responsibilities under the law issue such regulations as may be necessary to implement the policy of this order.

SECTION 8. This order supersedes Executive Order No. 9980 of July 26, 1948, and the Fair Employment Board established thereby in the Civil Service Commission is abolished. The records and property of the Fair Employment Board shall remain with the Civil Service Commission and shall be available for the use of the Committee.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

January 18, 1955.

APPENDIX VI

EXECUTIVE ORDER 10925

ESTABLISHING THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

WHEREAS discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and

WHEREAS it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and

WHEREAS it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

WHEREAS it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; and

WHEREAS a review and analysis of existing Executive orders, practices, and government agency procedures relating to government employment and compliance with existing nondiscrimination contract provisions reveal an urgent need for expansion and strengthening of efforts to promote full equality of employment opportunity; and

WHEREAS a single governmental committee should be charged with responsibility for accomplishing these objectives:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I--ESTABLISHMENT OF THE PRESIDENT'S
COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

SECTION 101. There is hereby established the President's Committee on Equal Employment Opportunity.

SECTION 102. The Committee shall be composed as follows:

(a) The Vice President of the United States, who is hereby designated Chairman of the Committee and who shall preside at meetings of the Committee.

(b) The Secretary of Labor, who is hereby designated Vice Chairman of the Committee and who shall act as Chairman in the absence of the Chairman. The Vice Chairman shall have general supervision and direction of the work of the Committee and of the execution and implementation of the policies and purposes of this order.

(c) The Chairman of the Atomic Energy Commission, the Secretary of Commerce, the Attorney General, the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, the Administrator of General Services, the Chairman of the Civil Service Commission, and the Administrator of the National Aeronautics and Space Administration. Each such member may designate an alternate to represent him in his absence.

(d) Such other members as the President may from time to time appoint.

(e) An Executive Vice Chairman, designated by the President, who shall be ex officio a member of the Committee. The Executive Vice Chairman shall assist the Chairman, the Vice Chairman and the Committee. Between meetings of the Committee he shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee pursuant to its rules,

delegations, and other directives. Final action in individual cases or classes of cases may be taken and final orders may be entered on behalf of the Committee by the Executive Vice Chairman when the Committee so authorizes.

SECTION 103. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules and regulations. It shall (a) consider and adopt rules and regulations to govern its proceedings; (b) provide generally for the procedures and policies to implement this order; (c) consider reports as to progress under this order; (d) consider and act, where necessary or appropriate, upon matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. Such reports shall be made at least once annually and shall include specific references to the actions taken and results achieved by each department and agency. The Chairman may appoint subcommittees to make special studies on a continuing basis.

PART II--NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

SECTION 201. The President's Committee on Equal Employment Opportunity established by this order is

directed immediately to scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government.

SECTION 202. All executive departments and agencies are directed to initiate forthwith studies of current government employment practices within their responsibility. The studies shall be in such form as the Committee may prescribe and shall include statistics on current employment patterns, a review of current procedures, and the recommendation of positive measures for the elimination of any discrimination, direct or indirect, which now exists. Reports and recommendations shall be submitted to the Executive Vice Chairman of the Committee no later than sixty days from the effective date of this order, and the Committee, after considering such reports and recommendations, shall report to the President on the current situation and recommend positive measures to accomplish the objectives of this order.

SECTION 203. The policy expressed in Executive Order No. 10590 of January 18, 1955 (20 F.R. 409), with

respect to the exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin is hereby reaffirmed.

SECTION 204. The President's Committee on Government Employment Policy, established by Executive Order No. 10590 of January 18, 1955 (20 F.R. 409), as amended by Executive Order No. 10722 of August 5, 1957 (22 F.R. 6287), is hereby abolished, and the powers, functions, and duties of that Committee are hereby transferred to, and henceforth shall be vested in, and exercised by, the President's Committee on Equal Employment Opportunity in addition to the powers conferred by this order.

PART III--OBLIGATIONS OF GOVERNMENT CONTRACTORS

AND SUBCONTRACTORS

SUBPART A--CONTRACTORS' AGREEMENTS

SECTION 301. Except in contracts exempted in accordance with section 303 of this order, all government contracting agencies shall include in every government contract hereafter entered into the following provisions:

"In connection with the performance of work under this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract

or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

"(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part

and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

"(7) The contractor will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 or Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SECTION 302. (a) Each contractor having a contract containing the provisions prescribed in section 301 shall file, and shall cause each of its subcontractors to file, Compliance Reports with the contracting agency, which will be subject to review by the Committee upon its request. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Committee may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or other representative of workers, the Compliance Report shall include such information as to the labor union's or other representative's practices and policies affecting compliance

as the Committee may prescribe: Provided, that to the extent such information is within the exclusive possession of a labor union or other workers' representative shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Committee may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent of any labor union or other workers' representative with which the bidder or prospective contractor deals, together with supporting information, to the effect that the said labor union's or representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or representative either will affirmatively cooperate, within the limits of his legal and contractual authority, in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and

provisions of the order. In the event that the union or representative shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement.

SECTION 303. The Committee may, when it deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including the provisions of section 301 of this order in any specific contract, subcontract, or purchase order. The Committee may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (a) where work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (b) for standard commercial supplies or raw materials; or (c) involving less than specified amounts of money or specified numbers of workers.

SUBPART B--LABOR UNIONS AND REPRESENTATIVES OF WORKERS

SECTION 304. The Committee shall use its best efforts, directly and through contracting agencies, contractors, state and local officials and public and private

agencies, and all other available instrumentalities, to cause any labor union, recruiting agency or other representative of workers who is or may be engaged in work under Government contracts to cooperate with, and to comply in the implementation of, the purposes of this order.

SECTION 305. The Committee may, to effectuate the purposes of section 304 of this order, hold hearings, public or private, with respect to the practices and policies of any such labor organization. It shall from time to time submit special reports to the President concerning discriminatory practices and policies of any such labor organization, and may recommend remedial action if, in its judgment, such action is necessary or appropriate. It may also notify any Federal, state, or local agency of its conclusions and recommendations with respect to any such labor organization which in its judgment has failed to cooperate with the Committee, contracting agencies, contractors, or subcontractors in carrying out the purposes of this order.

SUBPART C--POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE
ON EQUAL EMPLOYMENT OPPORTUNITY
AND OF CONTRACTING AGENCIES

SECTION 306. The Committee shall adopt such rules and regulations and issue such orders as it deems necessary and appropriate to achieve the purposes of this order, including the purposes of Part II hereof relating to discrimination in Government employment.

SECTION 307. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Committee with respect to contracts entered into by such agency or its contractors, or affecting its own employment practices. All contracting agencies shall comply with the Committee's rules in discharging their primary responsibility for security compliance with the provisions of contracts and otherwise with the terms of this Executive order and of the rules, regulations, and orders of the Committee pursuant hereto. They are directed to cooperate with the Committee, and to furnish the Committee such information and assistance as it may require in the performance of its functions under this order. They are further directed to appoint or designate, from among the agency's personnel,

compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this order by conference, conciliation, mediation, or persuasion.

SECTION 308. The Committee is authorized to delegate to any officer, agency, or employee in the executive branch of the Government any function of the Committee under this order, except the authority to promulgate rules and regulations of a general nature.

SECTION 309. (a) The Committee may itself investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency or through the Secretary of Labor, to determine whether or not the contractual provisions specified in section 301 of this order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Committee, and the investigating agency shall report to the Committee any action taken or recommended.

(b) The Committee may receive and cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in section 301 of this order. The

appropriate contracting agency or the Secretary of Labor, as the case may be, shall report to the Committee what action has been taken or is recommended with regard to such complaints.

SECTION 310. (a) The Committee, or any agency or officer of the United States designated by rule, regulation, or order of the Committee, may hold such hearings, public or private, as the Committee may deem advisable for compliance, enforcement, or educational purposes.

(b) The Committee may hold, or cause to be held, hearings in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order, except that no order for debarment of any contractor from further government contracts shall be made without a hearing.

SECTION 311. The Committee shall encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other non-governmental groups in order to eliminate or reduce the basic causes of discrimination in employment on the ground of race, creed, color, or national origin.

SUBPART D--SANCTIONS AND PENALTIES

SECTION 312. In accordance with such rules, regulations or orders as the Committee may issue or adopt, the Committee or the appropriate contracting agency may:

(a) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order or of the rules, regulations, and orders of the Committee.

(b) Recommend to the Department of Justice that, in cases where there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 301 of this order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the aforesaid provisions.

(c) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Committee as the case may be.

(d) Terminate, or cause to be terminated, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be terminated absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(e) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any non-complying contractor, until such contractor has satisfied the Committee that he has established and will carry out personnel and employment policies in compliance with the provisions of this order.

(f) Under rules and regulations prescribed by the Committee, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under paragraph (b) of this section, or before a contract shall be terminated in whole or in part under paragraph (d) of this section for failure of a contractor or subcontractor to comply with the contract provisions of this order.

SECTION 313. Any contracting agency taking any action authorized by this section, whether on its own motion, or as directed by the Committee, or under the Committee's rules and regulations, shall promptly notify the Committee of such action or reasons for not acting. Where the Committee itself makes a determination under this section, it shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Committee within such time as the Committee shall provide.

SECTION 314. If the Committee shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the Committee or, if the Committee so authorizes, to the contracting agency.

SECTION 315. Whenever a contracting agency terminates a contract, or whenever a contractor has been debarred from further Government contracts, because of noncompliance with the contractor provisions with regard to nondiscrimination, the Committee, or the contracting

agency involved, shall promptly notify the Comptroller General of the United States.

SUBPART E--CERTIFICATES OF MERIT

SECTION 316. The Committee may provide for issuance of a United States Government Certificate of Merit to employers or employee organizations which are or may hereafter be engaged in work under Government contracts, if the Committee is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading and other practices and policies of the employee organization, conform to the purposes and provisions of this order.

SECTION 317. Any Certificate of Merit may at any time be suspended or revoked by the Committee if the holder thereof, in the judgment of the Committee, has failed to comply with the provisions of this order.

SECTION 318. The Committee may provide for the exemption of any employer or employee organization from any requirement for furnishing information as to compliance if such employer or employee organization has been awarded a Certificate of Merit which has not been suspended or revoked.

PART IV- MISCELLANEOUS

SECTION 401. Each contracting agency (except the Department of Justice) shall defray such necessary expenses of the Committee as may be authorized by law, including section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691): Provided, that no agency shall supply more than fifty percent of the funds necessary to carry out the purposes of this order. The Department of Labor shall provide necessary space and facilities for the Committee. In the case of the Department of Justice, the contribution shall be limited to furnishing legal services.

SECTION 402. This order shall become effective thirty days after its execution. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order and of the rules and regulations of the Committee.

SECTION 403. Executive Order No. 10479 of August 13, 1953 (18 F.R. 4899), together with Executive Orders Nos. 10482 of August 15, 1953 (18 F.R. 4944), and 10733 of October 10, 1957 (22 F.R. 8135), amending that order, and Executive Order No. 10557 of September 3, 1954 (19 F.R. 5655), are hereby revoked, and the Government

Contract Committee established by Executive Order No. 10479 is abolished. All records and property of or in the custody of the said Committee are hereby transferred to the President's Committee on Equal Employment Opportunity, which shall wind up the outstanding affairs of the Government Contract Committee.

JOHN F. KENNEDY

THE WHITE HOUSE,

March 6, 1961.

APPENDIX VII

EXECUTIVE ORDER 11114

EXTENDING THE AUTHORITY OF THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

WHEREAS it is the policy of the United States Government to encourage by affirmative action the elimination of discrimination because of race, creed, color, or national origin in employment on work involving Federal financial assistance, to the end that employment opportunities created by Federal funds shall be equally available to all qualified persons; and

WHEREAS Executive Order No. 10925 of March 6, 1961, 26 F.R. 1977, reaffirmed the policy of requiring the inclusion of nondiscrimination provisions in Government contracts and established the President's Committee on Equal Employment Opportunity to administer the program for obtaining adherence to and compliance with such provisions; and

WHEREAS construction under programs of Federal grants, loans, and other forms of financial assistance to State and local governments and to private organizations creates substantial employment opportunities; and

WHEREAS it is deemed desirable and appropriate to extend the existing program for nondiscrimination in employment in Government contracts established by Executive Order No. 10925 to include certain contracts for construction financed with assistance from the Federal Government; and

WHEREAS it is also desirable to amend Executive Order No. 10925 in certain respects in order to clarify the authority of the President's Committee on Equal Employment Opportunity:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I--NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED
CONSTRUCTION CONTRACTS

SECTION 101. Each executive department and agency which administers a program involving Federal financial assistance shall, insofar as it may be consistent with law, require as a condition for the approval of any grant, contract, loan, insurance or guarantee thereunder which may involve a construction contract that the applicant for Federal assistance undertake and agree to

incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the Credit of the Federal Government pursuant to such grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the provisions prescribed for Government contracts by section 301 of Executive Order No. 10925 or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the President's Committee on Equal Employment Opportunity (the "Committee"), together with such additional provisions as the Committee deems appropriate to establish and protect the interest of the United States in the enforcement of these obligations. Each such applicant shall also undertake and agree (i) to assist and cooperate actively with the administering department or agency and the Committee in obtaining the compliance of contractors and subcontractors with said contract provisions and with the rules, regulations, and relevant orders of the Committee, (ii) to obtain and to furnish to the administering department or agency and to the Committee such information as they may require for

the supervision of such compliance, (iii) to enforce the obligations of contractors and subcontractors under such provisions, rules, regulations, and orders, (iv) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Committee or the administering department or agency pursuant to Part III, Subpart D, of Executive Order No. 10925, and (v) to refrain from entering into any contract subject to this order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part III, Subpart D, of Executive Order No. 10925.

SECTION 102. (a) "Construction contract" as used herein means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part III of Executive Order No. 10925 shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used herein means an applicant for Federal assistance or, as determined

by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance or guarantee is not finally acted upon prior to the effective date of this part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SECTION 103. (a) Each administering department and agency shall be primarily responsible for obtaining the compliance of such applicants with their undertakings hereunder and shall comply with the rules of the Committee in the discharge of this responsibility. Each administering department and agency is directed to cooperate with the Committee, and to furnish the Committee such information and assistance as it may require in the performance of its functions under this order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may, and upon the recommendation of the Committee, shall take any or all of the following actions:

(1) cancel, terminate, or suspend in whole or in part the agreement or contract with such applicant with respect to which the failure and refusal occurred;

(2) refrain from extending any further assistance under any of its programs subject to this order until satisfactory assurance of future compliance has been received from such applicant;

(3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) No action shall be taken with respect to an applicant pursuant to paragraph (1) or (2) of subsection (b) without notice and hearing before the administering department or agency or the Committee, in accordance with the rules and regulations of the Committee.

SECTION 104. The Committee may, by rule, regulation, or order, exempt all or part of any program of an administering agency from the requirements of this order when it deems that special circumstances in the national interest so require.

SECTION 105. The Committee shall adopt such rules and regulations and issue such orders as it deems necessary and appropriate to achieve the purposes of this order.

PART II--AMENDMENTS TO EXECUTIVE ORDER NO. 10925

SECTION 201. Section 301 of Executive Order No. 10925 of March 6, 1961, is amended to read:

"SECTION 301. Except in contracts exempted in accordance with section 303 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

'During the performance of this contract, the contractor agrees as follows:

'(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices

to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

'(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

'(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

'(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

'(5) The contractor will furnish all information and reports required by Executive Order No. 10925

of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

'(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

'(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive

Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.'"

SECTION 202. Section 303 of Executive Order No. 10925 is amended to read:

"The Committee may, when it deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of section 301 of this order in any specific contract, subcontract or purchase order. The Committee may, by rule or regulation, also exempt certain classes of contracts, subcontracts or purchase orders (a) where work is to be or has been performed outside the United States and no recruitment of workers

within the limits of the United States is involved; (b) for standard commercial supplies or raw materials; (c) involving less than specified amounts of money or specified numbers of workers; or (d) to the extent that they involve subcontracts below a specified tier. The Committee may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that such an exemption will not interfere with or impede the effectuation of the purposes of this order and provided that in the absence of such an exemption all such facilities shall be covered by the provisions of this order."

PART III--MISCELLANEOUS

SECTION 301. The Secretary of Health, Education, and Welfare and the Administrator of the Housing and Home Finance Agency are designated members of the Committee. Each member may designate an alternate to represent him in his absence.

SECTION 302. Section 401 of Executive Order No. 10925 shall apply to the administering departments and agencies subject to this order.

SECTION 303. Part I of this order shall become effective thirty days after the execution of this order. Parts II and III shall be effective immediately.

JOHN F. KENNEDY

THE WHITE HOUSE,

June 22, 1963.

APPENDIX VIII

EXECUTIVE ORDER 11063

EQUAL OPPORTUNITY IN HOUSING

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an

alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I--PREVENTION OF DISCRIMINATION

SECTION 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin--

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are--

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise

obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

SECTION 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101 (a) (ii), (iii), and (iv).

PART II--IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

SECTION 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing

established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

SECTION 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

SECTION 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III--ENFORCEMENT

SECTION 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SECTION 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such

action as may be appropriate under its governing laws, including, but not limited to, the following:

It may--

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SECTION 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or

violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SECTION 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

PART IV--ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE
ON EQUAL OPPORTUNITY IN HOUSING

SECTION 401. There is hereby established the President's Committee on Equal Opportunity in Housing which shall be composed of the Secretary of the Treasury; the Secretary of Defense, the Attorney General; the Secretary of Agriculture; the Housing and Home Finance

Administrator; the Administrator of Veterans Affairs; the Chairman of the Federal Home Loan Bank Board; a member of the staff of the Executive Office of the President to be assigned to the Committee by direction of the President, and such other members as the President shall from time to time appoint from the public. The member assigned by the President from the staff of the Executive Office shall serve as the Chairman and Executive Director of the Committee. Each department or agency head may designate an alternate to represent him in his absence.

SECTION 402. Each department or agency subject to this order shall, to the extent authorized by law (including § 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691), furnish assistance to and defray the necessary expenses of the Committee.

PART V--POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE
ON EQUAL OPPORTUNITY IN HOUSING

SECTION 501. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules. It shall: (a) adopt rules to govern its deliberations and activities; (b) recommend general policies and procedures to implement this order;

(c) consider reports as to progress under this order;
(d) consider any matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. A report to the President shall be made at least once annually and shall include references to the actions taken and results achieved by departments and agencies subject to this order. The Committee may provide for the establishment of subcommittees whose members shall be appointed by the Chairman.

SECTION 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, creed, or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order;

examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

SECTION 503. The Committee shall have an executive committee consisting of the Committee's Chairman and two other members designated by him from among the public members. The Chairman of the Committee shall also serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

PART VI--MISCELLANEOUS

SECTION 601. As used in this order, the term "departments and agencies" includes any wholly-owned or

mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

SECTION 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY

THE WHITE HOUSE,

November 20, 1962.

V I T A

Ruth Lorene Prouse Morgan, the daughter of Dr. Ervin J. Prouse and Thelma Ruth Prouse, was born in Berkeley, California, March 30, 1934. In September, 1939, her family moved to Austin, Texas, where she received all of her public schooling. Upon graduation from Austin High School in 1952, she entered The University of Texas and received the degree of Bachelor of Arts in June, 1956. She taught at O. Henry Junior High School in Austin, Texas, in 1957, and at Victoria College, Victoria, Texas, in 1958 and 1959. In September, 1961, she began graduate study in the Department of Government at Louisiana State University, received the degree of Master of Arts in August, 1962, and is a candidate for the degree of Doctor of Philosophy in May, 1966.

She is married to Vernon E. Morgan of Lampasas, Texas, and has one son, Glenn Edward Morgan.

EXAMINATION AND THESIS REPORT

Candidate: Ruth Lorene Prouse Morgan

Major Field: Government

Title of Thesis: The Presidential Executive Order as an Instrument for Policy-Making

Approved:

Allan R. Richards

Major Professor and Chairman

Max Gordian

Dean of the Graduate School

EXAMINING COMMITTEE:

Rue Williamson

Paul H. Lewis

Peter Hien

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Date of Examination:

April 14, 1966